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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 395. 99

ROBERT G. HOFFMAN AND CHARLES O'DONNELL LEE, TRADING AS HOFFMAN, LEE & COMPANY, APPELLANTS,

vs.

WILLIAM J. OVERBEY, COMMITTEE OF JAMES R. MILLNER, LUNATIC; JOHN P. MILLNER, AND J. D. BLAIR, ADMINISTRATOR OF JOSEPH T. MILLNER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED SEPTEMBER 8, 1887.

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INDEX.

	Original.	Print.
Caption	*a*	1
Præcipe for summons	1	1
Summons	2	1
Marshal's return	3	2
Bill of complaint	4	2
Exhibit Hoffman No. 1—Contract of Millner Bros. with Hoffman, Lee & Co., March 5, 1873, and settlement of same, Sept. 26, 1873	31	11
No. 2—Deed of James R. Millner *et ux.* to Hoffman, Lee & Co., March 15, 1873, &c.	34	12
No. 3—Deed of Hoffman, Lee & Co. to Millner Bros., June 10, 1874	40	14
No. 4—Deed of Millner Bros. to James R. Millner, September 3, 1874	44	16
No. 5—Account of James R. Millner with Hoffman, Lee & Co.	48	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 26, 1890.

	Original.	Print.
Exhibit Hoffman No. 6—Account of sales of 122 boxes manufactured tobacco sold by Hoffman, Lee & Co. for account of James R. Millner	50	19
No. 7—Account of sales of 123 boxes manufactured tobacco sold by Hoffman, Lee & Co. for account of James R. Millner	51	19
No. 8—Account of sales of 365 boxes manufactured tobacco sold by Hoffman, Lee & Co. for Messrs. Millner Bros. for account of James R. Millner	52	20
No. 9—Memorandum of property given by James R. Millner to R. G. Hoffman, June 12, 1885, as standing in his name	53	21
Exhibit Boyland No. 1—Letter of G. Halstead Boyland to R. G. Hoffman, June 6, 1885	54	21
No. 2—Letter of G. Halstead Boyland to R. G. Hoffman, June 10, 1885	55	22
No. 3—Letter of James R. Millner to R. G. Hoffman, June 10, 1885, with P. S. by G. H. B.	57	22
Exhibit Millner No. 1—Order granting letters of administration on estate of J. T. Millner	57	23
Exhibit Peatross No. 1—Letter of R. W. Peatross to Hoffman, Lee & Co., May 12, 1885	58	23
No. 2—Letter of Hoffman, Lee & Co. to R. W. Peatross, May 13, 1885	60	24
No. 3—Letter of Hoffman, Lee & Co. to James R. Millner, May 13, 1885	61	24
No. 4—Letter of Hoffman, Lee & Co. to R. W. Peatross	62	24
No. 5—Letter of R. W. Peatross to Hoffman, Lee & Co., June 8, 1885	63	25
Notices to take depositions, &c.	64	25
Evidence for complainants	70	28
Deposition of Robert Gilmer Hoffman	71	28
Charles O'Donnell Lee	125	47
William T. Thelin	134	50
Charles Lee Mitchell	136	51
Henry S. Taylor	138	52
W. R. Hoff	146	56
Joseph T. Manning	147	56
Exhibit Sullivan No. 1—Account James R. Millner with Hoffman, Lee & Co.	150	57
No. 2—Letter of James R. Millner to Hoffman, Lee & Co., March 11, 1873	151	58
No. 3—Letter of Millner Bros. to Hoffman, Lee & Co., December 19, 1872	154	59
No. 4—Letter of Millner Bros. to Hoffman, Lee & Co., July 24, 1873	158	60

	Original	Print.
Exhibit Sullivan No. 5—Letter of Hoffman, Lee & Co. to James R. Millner	159	61
No. 6—Letter of Hoffman, Lee & Co. to Millner Bros., July 28	162	62
No. 7—Letter of James R. Millner to Hoffman, Lee & Co., April 15, 1873	163	62
No. 8—Copy of memorandum	171	65
No. 9—Letter of Millner Bros. to Hoffman, Lee & Co., July 15, 1873	172	65
No. 10—Letter of James R. Millner to Hoffman, Lee & Co., July 5, 1885	174	66
No 11—Letter of G. Halstead Boyland to Hoffman, Lee & Co., June 17, 1885	174	66
No. 12—Letter of G. Halstead Boyland to R. G. Hoffman, June 17, 1885	176	67
Deposition of Dr. G. Halstead Boyland	181	69
Exhibit Boyland No. 4—Letter of Robert G. Hoffman to G. Halstead Boyland, June 15, 1885	211	81
Same to same, June 19, 1885	214	82
Same to same, June 23, 1885	214	82
Same to same, June 23, 1885	216	82
Same to same, June 29, 1885	218	83
Exhibit Boyland No. 5—Letter of G. Halstead Boyland to R. G. Hoffman, June 21, 1885	220	84
No. 6—Letter of G. Halstead Boyland to R. G. Hoffman, June 17, 1885	224	85
Same to same, June 25, 1885	226	85
Same to same, July 3, 1885	227	86
Same to same, July 5, 1885	229	86
Same to same, July 13, 1885	229	87
No. 7—Letter of G. Halstead Boyland to Judge Aiken, July 1, 1885, with P. S. by James R. Millner	231	87
Evidence for defendants	233	88
Deposition of Thomas F. Goode	234	88
Agreement as to opening depositions	269	100
Order granting time to answer, &c.	270	100
Answer of W. I. Overbey, committee, &c., of James R. Millner	271	101
Evidence for complainants	275	102
Deposition of J. H. Estes	277	103
James P. Harrison	285	106
D. J. Traynham	304	113
James P. Harrison (cross)	309	114
W. F. Patton	327	120
C. A. Prittchett	330	121
Exhibit Harrison No. 1—Deed between James R. Millner and Hoffman, Lee & Co., Feb'y 13, 1871	334	122
No. 2—Deed between James R. Millner and Hoffman, Lee & Co., May 3, 1872	339	124
No. 3—Agreement between James R. Millner and Hoffman, Lee & Co., February 28, 1873	341	125

	Original.	Print.
Exhibit W. F. Patton No. 1—Account of James R. Millner with W. S. Patton, Sons & Co.	347	127
Exhibit Pritchett No. 1—Letter of James R. Millner to Hoffman, Lee & Co., September 6, 1872	348	128
No. 2—Letter of James R. Millner to Hoffman, Lee & Co., December 6, 1872	351	129
Evidence for defendants	357	130
Deposition of Dr. Hunter McGuire	358	131
J. D. Blair	368	134
Dr. L. E. Harvie	387	141
Dr. W. A. Trotter	404	147
John P. Millner	429	155
D. B. Conrad	513	186
C. J. Armistead	518	188
Exhibit J. P. Millner No. 2—Copy of order for examination of James R. Millner before commitment to the insane asylum.	519	188
Exhibit C. J. A.—Copy of commitment of James R. Millner to the insane asylum	520	189
Deposition of Grief Lamkin	523	190
J. H. Estes	524	191
W. I. Overbey	525	191
Exhibit Overbey No. 1—Account of James R. Millner with John P. Pleasants & Sons	529	192
Order granting leave to J. P. Millner to file answer and to complainants to file replications, &c.	530	193
Answer of J. P. Millner	531	193
General replication	558	199
Replication to answer of J. P. Millner	559	199
Opinion of Judge Bond	561	200
Final decree	568	202
Order allowing appeal	569	202
Appeal bond	570	203
Clerk's certificate	570	203

a *Record.*

In the Circuit Court of the United States for the Western District of Virginia, at Danville, Va., in the Fourth Judicial Circuit.

In Re HOFFMAN, LEE & Co., Pl't'fs,
vs.
JAMES R. MILLNER, JOHN P. MILLNER, J. D. BLAIR, Adm'r, &c., of Joseph T. Millner, Dec'd, Def'ts. } In Chancery.

On appeal of plaintiff to the Supreme Court of the United States, at Washington, D. C.

1 *In Re* HOFFMAN, LEE & Co., Pl't'fs,
vs.
JAMES R. MILLNER, JOHN P. MILLNER, J. D. BLAIR, Adm'r, &c., of Joseph T. Millner, Dec'd, Def'ts. } In Chancery.

Pleas before the judge of the circuit court of the United States for the western district of Virginia, in the fourth judicial circuit, at Danville, Virginia.

Be it remembered that heretofore, to wit, on the 30th day of June, in the year of our Lord one thousand eight hundred and eighty-five, the plaintiffs, Hoffman, Lee & Co., by their counsel, appeared in the clerk's office of the aforesaid circuit court, at Danville, Va., and made the following entry on the clerk's minute book, to wit:

RO. G. HOFFMAN and C. O'DONNELL LEE, Partners Doing Business in the City of Baltimore, Md., under the Style and Firm of Hoffman, Lee & Co., Complainants,
2 *vs.*
JAMES R. MILLNER, JNO. P. MILLNER, in His Own Right and as Surviving Partner of Himself and Joseph T. Millner, Late Partners as Millner Bros., and J. D. Blair, Adm'r, &c., of Joseph T. Millner, Dec'd, Defendants.

Issue summons to August rules, 1885, for complainants against defendants to answer a bill in chancery filed in this court.

GREEN & MILLER,
BERKELEY & HARRISON,
For Complainants.

To the clerk of the circuit court of the U. S. for the western dist. of Va., at Danville, Va.

Whereupon the said clerk did issue the summons ordered; which said summons, with the marshal's return thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Western District of Virginia*, } ss:

The United States of America to the marshal of the western district of Virginia, Greeting:

We command you to summon James R. Millner, Jno. P. Millner, in his own right and as surviving partner of himself and Joseph T. Millner, late partners as Millner Bros., and J. D. Blair, ad-
3 ministrator, &c., of Joseph T. Millner, deceased, all of Pittsylvania county, Virginia, if they shall be found in your district, to be and appear at the clerk's office of our circuit court of the United States for the western district of Virginia at rules to be holden at Danville, in the district aforesaid, on the first Monday of August, 1885, to answer Hoffman, Lee & Co. on a bill in chancery. Damages, $1,000.

And this you will in nowise omit under penalty of the law in that case made and provided, and have you then and there this writ.

Witness the Hon. M. R. Waite, Chief Justice of the
[SEAL.] United States, at Danville, this 30th day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th year.

CHARLES MARTIN, *Clerk.*

Endorsed by the marshal: "Executed this the 2d day of July, 1885, by delivering a true copy of the within written subpœna to J. D. Blair, and also a true copy of same to Jno. P. Millner, and as to James R. Millner I executed the within subpœna by leaving a true copy thereof at the dwelling-house and usual place of
4 abode, with the wife and daughter of said James R. Millner, he not being found there, who are adults and members and residents in the family of said James R. Millner. The service as to said J. D. Blair was made and done in Danville, Va., and as to said Jno. P. Millner and James R. Millner in the county of Pittsylvania, Va., all within my district, and all done on the said 2d day of July, 1885. John G. Watts, U. S. M., per John T. Cox, deputy."

Further endorsed: Returned, entered, & filed July 4, 1885. Chas. Martin, clerk.

On the same day, to wit, on the 30th day of June, 1885, in the clerk's office of the court aforesaid, the plaintiffs, by their counsel, did file a certain bill; which said bill is in the words and figures following, to wit:

Circuit Court of the United States for the Western District of Virginia.

To the honorable judges of the circuit court of the United States for the western district of Virginia:

Humbly complaining, show unto your honors your orators,
5 Robert G. Hoffman and Charles O'Donnell Lee, partners doing business in the city of Baltimore under the firm and

style of Hoffman, Lee & Co., residents respectively of said city of Baltimore and of the county of Baltimore, and citizens both of the State of Maryland—

That they are commission merchants and dealers in manufactured tobacco and have been engaged under such firm and style in such business since the year 1870.

That James R. Millner was a manufacturer of tobacco who resided and resides in the county of Pittsylvania and State of Virginia and did business in said county of Pittsylvania at or near Axton.

That the said James R. Millner entered into a contract and agreement with the said Hoffman, Lee & Co. prior to February 13th, 1871, whereby the said Hoffman, Lee & Co., your orators, advanced said Millner money, as needed in the said business, to be used in the purchase of leaf tobacco to be manufactured and shipped when manufactured to your orators, to be sold by them, first, to cover
6 said advances and then the net balances to be paid over to said James R. Millner; that it was expressly agreed and understood and was the very condition upon which your orators made the said advances of money that the same should be invested in the purchase, manufacture, and shipment of tobacco, and that said James R. Millner had no right to divert any part of such advance at any time or under the various contracts and agreements or any renewals of such contracts and agreements for any period or part of any period covered by said transactions to any other use or purpose without special permission from your orators so to do, but was bound to use every dollar thereof in such purchase of leaf tobacco and the manufacture of the same, and then to ship the same when manufactured to your orators as aforesaid, who were intitled to such manufactured tobacco to cover said advances so made; that to secure the faithful carrying out on his part of his said several agreements, as embraced under said contract, and to protect your orators
7 from all loss by reason of the very large amounts of money thus advanced to him from time to time, the said James R. Millner, by deed duly executed on the 13th of February, 1871, conveyed to said Hoffman, Lee and Company certain valuable real estate, with the improvements thereon, which he represented at the time to be worth $15,000, which was the limit of said advances for 1871, and again on May 3rd, 1872, the said James R. Millner did further extend the operation of said mortgage to cover the advances of 1872.

That towards the close of 1872 and the first of 1873 the said James R. Millner accounted to and with your orators of the divers transactions between them, representing that he had faithfully invested and used all the advances of money so made in such purchase and manufacture of leaf tobacco and had shipped the same to your orators as agreed, and relying upon his said representations and accounting to and with him in the faith of such reliance your orators found that the said James R. Millner owed them as of January 23rd, 1873, the large sum of $23,360.61, twenty-three thousand
8 three hundred and sixty and sixty-one one-hundredths dollars, subject to such credits for stock of tobacco as was already

in their hands; that thereupon, in February, 1873, the said James R. Millner saw your orators with regard to the unsettled balance between them, and representing to them his total inability to pay and discharge his debts to them, threatening to avail himself of the benefit of the existing bankrupt law, offered to give up and surrender to them all the property he owned and to give them a clear title thereto instead of a mere security therein; that he represented the property held by your orators as security for their said debts as worth $6,000 to $8,000; that it was all he had on earth; that he had faithfully carried out his contracts with your orators, and indeed prevailed upon your orators, who placed full faith in his representations, after selling such manufactured tobacco as was then on hand and crediting the said $23,260.61 by the proceeds of such sale, to accept a fee-simple title to said property so held by
9 them as such security and to release him forever from the balance of said debt. Your orators agreed to do this only because they believed said James R. Millner's representations, credited as true the exhibit he had made of his affairs, and because they did not desire to force him to become a bankrupt and his family penniless.

That at this time Joseph T. Millner and John P. Millner, both brothers of said James R. Millner, were doing business as Millner Brothers, manufactur-s of tobacco, at Bachelor's Hall, in said county of Pittsylvania, Virginia, where they also resided; that the said J. T. Millner had been sent to Baltimore repeatedly on the part of James R. Millner to confer with your orators and arrange with them as to the storage and sale of his tobacco in their hands, and thus was fully advised of the exact standing of James R. Millner's affairs; that the said Millner Brothers agreed on March 5th, 1873, to take the property held by your orators as security for their debts, and which when they first made such advances was represented
10 to them by said James R. Millner as worth $15,000, but at this time was valued by him only at $6,000 to $8,000, off the hands of your orators, paying them therefor 16,000 lbs. manufactured tobacco of stipulated grade and character, and your orators agreed to consummate this transfer of the property to said Millner Brothers, relying upon the representations of themselves and James R. Millner that its fair value was as aforesaid, and never dreaming at the time that the whole transaction was part and parcel of a gross fraud upon them, as will be seen; that accordingly the said Millner Brothers and your orators entered into a written agreement, the original whereof, dated March 5th, 1873, at Baltimore, is herewith filed and prayed to be read as part hereof, marked Exhibit Hoffman No. 1.

That your orators, in full faith of the fairness of said several settlements and not dreaming that there existed any conspiracy between said several parties to defraud them, upon the 15th day of
11 March, 1873, consummated the parol agreement to accept the mortgaged property from James R. Millner and release him from balance due them, and to that end the said James R. Millner and wife made them a deed dated March 15th, 1873, which fixed

the balance due said Hoffman, Lee & Co. as of said date at $15,758.67, to which amount the said James R. Millner bound himself, and which was reached by allowing him such prices for the unsold tobacco in your orators' hands as he deemed it to be worth, but when subsequently sold it, in fact, brought so much less that the true balance, as will be seen, amounted to nearly or quite $18,000, and by said deed the said James R. Millner and wife vested in said Hoffman, Lee and Company the fee-simple title to said mortgaged property, who, in their turn, agreed to release said James R. Millner from all further liability to them on account of said debt.

That said original deed from James R. Millner and wife is herewith filed, to be read as a part hereof, marked Exhibit Hoffman No. 2.

12 That your orators subsequently conveyed the said property to Millner Brothers, as agreed in Exhibit Hoffman No. 1, by a deed, a certified copy whereof is herewith filed, to be read as a part hereof, marked Exhibit Hoffman No. 3.

That thereafter and, as your orators charge, in pursuance of the original purpose and plan between the said James R. Millner and said Millner Brothers they reconveyed the said property to said James R. Millner, as will be seen by the certified copy of the deed herewith filed, to be read as a part hereof, marked Exhibit Hoffman No. 4.

That during the several years preceeding the said release of the balance of their debt due your orators as aforesaid the said James R. Millner, in direct violation of the very letter of the conditions of his contract and agreement with your orators upon and under which the said advances of money had been made him by your orators, systematically set apart and appropriated to himself certain sums from such advances without the knowledge of your orators,

13 until, at the time of said settlement and release, he had thus accumulated the large amount of twelve thousand dollars ($12,000), which money he had thus without warrant deducted from the advances and failed to invest and use as agreed, so that by his failure, of course, the quantity of tobacco purchased, manufactured, and shipped, was proportionately decreased, whereas if this large sum had been used as the rest of the advances had been and as under the agreement all should have been, instead of there being any balance due your orators upon said settlement they might probably have been reimbursed in full and said Millner might have had money to his credit in your orators' hands.

That at the time of said settlement and release your orators were not advised that said Millner had so much money; certainly they never suspected that he had $12,000 of their money in his hands in ready cash, which had been advanced only to be used in the purchase and manufacture of tobacco for them as aforesaid,

14 and that these facts were fraudulently concealed from your orators by said Millner to enable him to secure said release and thus defraud your orators.

That your orators are advised by said James R. Millner and others that Joseph T. Millner and John P. Millner, said Millner Brothers,

knew that said James R. Millner had the said $12,000 of your orators' money, or at least knew that he had a large sum of money rightfully belonging to your orators; that they knew of said settlement and release and aided and abetted said James R. Millner therein, and that they took the conveyance to themselves of said property by Exhibit Hoffman No. 3 with this knowledge and to further this fraud, knowing at the time that the same was to be paid for with tobacco manufactured out of said money belonging to your orators, and to that end the said James R. Millner & Millner Brothers entered into a conspiracy to defraud your orators and took the said money of your orators so wrongfully appropri-
15 ated by said James R. Millner and worked it as common capital and divided the profits, and subsequently conveyed the property aforesaid, in pursuance of said fraud, to said James R. Millner, themselves sharing in the general division of profits arising from the use of said money.

That the said 16,000 pounds manufactured tobacco netted your orators only $5,239.16, and that upon March 4th, 1874, the actual balance due to your orators by said James R. Millner amounted to $14,056.26, as will be seen from the accounts stated, herewith filed to be read as a part hereof, marked Exhibit Hoffman No. 5, made up by Wm. T. Thelin from the books of said Hoffman, Lee & Co., kept in due course of their business and now drawn off at their request by said William T. Thelin, accountant, who is at present the auditor of the Baltimore and Ohio railroad, and supported by several account sales herewith filed as a part hereof and marked, respectively, Exhibit Hoffman No. 6, Exhibit Hoffman No. 7, and Exhibit Hoffman No. 8.

16 That from March 4th, 1874, until very recently your orators had rested absolutely upon the finality and good faith of the said several transactions and settlements aforesaid, and would have continued so forever but for the fact that within a few weeks past the said James R. Millner has revealed to your orators, through his counsel and in his own person, the facts of the fraud aforesaid.

That on the 13 h day of May, 1885, more than eleven years after the said final settlement, your orators were surprised to receive a letter from R. W. Peatross, Esq., of Messrs. Peatross and Harris, the attorneys for said James R. Millner, bearing date May 12th, 1885, which letter advised your orators that James R. Millner had sent for said R. W. Peatross, being in feeble health, and had apprised said Peatross that he had wronged your orators in the transactions and settlement aforesaid, and that he desired to confess his wrong and ask pardon of your orators, and that he said he was
17 unable to do more than confess his wrong. This letter is herewith filed, to be read as a part hereof, marked Exhibit Peatross No. 1.

That in response to the request of said letter, Exhibit Peatross No. 1, your orators wrote the letter, a press copy of which is herewith filed and marked Exhibit Peatross No. 2, to said W. R. Peatross, enclosing under the same cover a letter to said James R. Mill-

ner of even date, a press copy of which is herewith filed and marked Exhibit Peatross No. 3; that in Exhibit Peatross No. 2 your orators requested Mr. Peatross to convey the enclosure to said James R. Millner only if you (*i. e.*, said Peatross) feel satisfied that his statement of inability to make restitution is truthful, and in Exhibit Peatross No. 3 your orators forgave said James R. Millner only conditionally, believing that no man at such a solemn time would utter aught than the truth and relying upon his assurance that you (Millner) are powerless to make pecuniary restitution.

That on June 4th, 1885, your orators were in the town of
18 Danville on other business and laid the three foregoing letters before their counsel, and were advised for the first time that James R. Millner was amply able to make pecuniary restitution, being rated as worth from $60,000 to $75,000.

That on June 6th, 1885, not having heard from said R. W. Peatross and being desirous to know if he had received and forwarded the foregoing letter to said James R. Millner, your orators mailed the said Peatross the letter, of which the press copy is herewith filed, marked Exhibit Peatross No. 4, and in due course received a postal card from said Peatross, dated June 8th, 1885, and saying the letter had been duly forwarded.

This postal is herewith filed, marked Exhibit Peatross No. 5.

That contemporaneously with the receipt by your orators on June 9th of said Exhibit Peatross No. 5 the said R. G. Hoffman received a letter from Dr. G. Halstead Boyland, the resident physician at Buffalo Lithia Springs, Virginia, dated June 6th, 1885,
19 where said James R. Millner was under said writer's care as his patient, requesting said Hoffman to come to Buffalo to see said Millner, concluding: "Although Mr. Peatross wrote you the facts in the case, he would prefer to see you personally;" and this letter is herewith filed, marked Exhibit Boyland No. 1.

That thereupon your orator, R. G. Hoffman, accompanied by his legal adviser and counsel, James P. Harrison, of the firm of Berkeley & Harrison, Danville, Virginia, did make a special trip to Buffalo Lithia Springs at the request of said James R. Millner and for the purpose of seeing what said Millner wished and what he had to say, arriving there Thursday night, June 11th, 1885. On Wednesday, June 10th, 1885, your orator, R. G. Hoffman, telegraphed said Dr. Boyland to know whether his patient, the said James R. Millner, was well enough to see him, which telegram was received, your orators are advised, — was shown to said Millner at said Millner's —, who insisted upon paying the costs of the
20 message, saying it was upon his business, but requesting that further correspondence be by letter and not by telegraphic message, as the latter was too costly; that thereupon the said Boyland, at said Millner's request, wrote a letter to said Hoffman, herewith filed as a part hereof, marked Exhibit Boyland No. 2, but, not being satisfied with this, the said Millner dictated a letter to be written by said Boyland to said Hoffman, which letter so dictated is herewith filed and marked Exhibit Boyland No. 3.

That on Friday, June 12th, the said James R. Millner laid *bear* to

said Hoffman the whole history of the fraud and wrong he had done to your orators in the year 1873, stating substantially that out of the advances of money made him by said Hoffman, Lee & Co., your orators, he was in the habit of setting apart certain sums, which sums of money he did not use in purchasing and manufacturing tobacco, for which purpose only were the advances made, but simply set the same apart as so-called earnings or profits ere
21 the investments and purchases out of which such supposed earnings or profits were to arise had been made; that when said settlement was finally consummated, whereby he surrendered or professed to surrender everything on earth he owned, and thus by saving himself from bankruptcy and his family from ruin to give said Hoffman, Lee & Co. all that he had or all that they could get, and secured the release aforesaid from them, he had actually appropriated of their funds by the means and in the way aforesaid twelve thousand dollars ($12,000), of which he said he had five thousand dollars in gold and seven thousand dollars in greenbacks; that he had not seen a day of rest or peace since he did this wrong; that he was in very bad health of mind and body and could not feel satisfied with this load of guilt oppressing him; that he had long desired to make restitution and had so informed his friends and counsel, but they assured him that he was not able to
22 do so and he had believed them, but that his counsel's letter to said Hoffman, Lee & Co. (*i. e.*, Exhibit Peatross No. 1) did not exactly carry out his wishes, and therefore he had sought to have your orator, R. G. Hoffman, come face to face with him and settle the matter satisfactorily in order that he might make himself right with God and man.

Your orators aver that the brief *résumé* above fairly presents what was revealed to the said Hoffman and to others by the said James R. Milner on the occasion aforesaid, accompanied by minute details showing exactly how he had considered and carried out the fraud, and charging that he had been aided and abetted therein by Joseph T. Millner & John P. Millner, who constituted the firm of Millner Brothers aforesaid, who were cognizant of said fraud and who purchased said land of Hoffman, Lee & Co. as part and parcel thereof, and subsequently reconveyed it to him in furtherance of the same fraudulent purpose.

23 That in the same interview the said James R. Millner gave said R. G. Hoffman an inventory of his assets, real and personal, a copy of which catalogue is herewith filed, marked Exhibit Hoffman No. 9, aggregating $31,500.41, — closed by offering to make the said Hoffman, Lee & Co. a conveyance of certain property and to pay them certain monies in full satisfaction, which your orators would have been glad to receive as a matter of generous kindness to a dying and deeply distressed man, and so said, but said Millner said he could not act without the counsel of said R. W. Peatross. To secure this, said Millner commissioned the said James P. Harrison forthwith upon his return to Danville to see said Peatross, to acquaint him with all that had passed, and to ask him to come down and see said Millner; that this was done by said Harrison, but said

Peatross refused to go, and said he would not advise Millner to make any restitution or settlement of any kind, as he did not
24 believe he was capable of knowing what he was about; that this had been anticipated and lamented by said Millner, who besought the said Harrison to obviate the objection if possible.

That thereupon your orators themselves, as well as their counsel, wrote to said James R. Millner, advising him of the position taken by said R. W. Peatross, and that it was necessary for your orators forthwith to see to the maintenance and security of their rights to the full extent thereof before a court of justice, whereupon the said James R. Millner had a letter written and addressed to your orators, begging said R. G. Hoffman to return to Buffalo Lithia Springs and settle.

Your orators charge, therefore, that the whole settlement between them and said James R. Millner — procured and effected by said Millner through the said frauds above stated, aided and abetted by Millner Brothers, and is void, and that having just discovered the fraud by the admission and confession of all the foregoing disclosures they can hold the said James R. Millner for the full
25 amount of balance due them, and therefore they charge that the said James R. Millner is indebted to them in the sum of fourteen thousand and fifty-six dollars and twenty-six cents ($14,056.26), as of March 4th, 1874, with interest therefrom, as shown by the said account stated, Exhibit Hoffman No. 5, and that the land conveyed to Millner Brothers and by them to James R. Millner, having been paid for with their money, is their land, and they have the right to have the same conveyed to them.

Your orators charge further that the twelve thousand dollars ($12,000) admitted by said Millner to have been taken by him wrongfully and set apart to other than the purposes agreed upon as to the condition of its advance was their money. Irrespective of said several accounts, Exhibits Hoffman No. 5, 6, 7, and 8, said James R. Millner owed them, as of the early part of 1873 or the latter part of 1872, the amount of $12,000, which is now due them, principal and interest, and which, so far as was invested in
26 the purchase of said land conveyed by said deeds, Exhibit-Hoffman 3 and 4, gave them a resulting trust in and to said land so conveyed.

Your orators charge further that the deed of conveyance thus procured to be made by them to said Millner Brothers was part and parcel of this fraudulent scheme; that Millner Brothers took it on consideration of the 16,000 pounds manufactured tobacco, which was manufactured, by agreement with James R. Millner, with part of the said $12,000 belonging to your orators, and therefore the said conveyance is void, as also is the conveyance from Millner Brothers to James R. Millner; and your orators charge that Joseph T. Millner and John P. Millner were parties to the foregoing fraud upon them and aided and abetted said James R. Millner in the accomplishment of the same, and by using said money so fraudulently appropriated therefor, with knowledge of said fraud, the said indi-

vidual members of said firm and said firm of Millner Brothers
27 are responsible to your orators for all loss they may have sustained by reason of their thus conspiring with said James R. Millner and aiding him in thus defrauding your orators.

Your orators are advised that the correction of all such fraud and the reinstatement of parties defrauded to their proper and rightful position and standing is the peculiar province and delight of courts of equity, and that the bar of the statute of limitations begins to run only from the discovery of such fraud. Your orators are further advised that as they are residents and citizens of the State of Maryland and the defendants are residents and citizens of the State of Virginia, and the amount involved sufficient, this court has jurisdiction over this suit.

Your orators are advised that Joseph T. Millner departed this life on the — day of ——, 18—, and that J. D. Blair duly qualified as his administrator, in testimony whereof the certified copy of the appointment and qualification of said personal representative
28 is herewith filed, marked Exhibit Millner No. 1. To the end that your orators may have justice done them and the grievous wrongs aforesaid corrected, your orators humbly pray that James R. Millner, John P. Millner, in his own right and as surviving partner of himself and Joseph T. Millner, late partners as Millner Bros., and J. D. Blair, the administrator of Joseph T. Millner, deceased, be made parties defendant to this bill and required to answer the same severally upon oath, but your orators especially waive under the statute (acts 1883 & '4, ch. 16, sec. 1, p. 15) the effect of such answers as evidence if such waiver is available in the courts of the United States for the said State of Virginia.

Your orators pray that all said deeds of release and conveyance be set aside and declared null and void, and the said property so brought with the money of your orators be conveyed to them as in equity it should be, and your orators be reinstated in all their rights and privileges.

Your orators pray further that all needful and proper ac-
29 counts be taken and all other proceedings and steps to secure them whatsoever is theirs, and especially that the said John P. Millner and said Millner Brothers and said J. D. Blair, the administrator of Joseph T. Millner, deceased, be made to reimburse your orators, after all recourse against said James R. Millner is exhausted or proves futile, to the full extent of any such loss or deficiency of full recovery.

And your orators pray that the said James R. Millner be enjoined and restrained from alienating or disposing of the said property so bought with the money which belonged to them and by means of such fraud and in the fraudulent manner aforesaid.

Your orators pray for all further and fuller general relief as to them in equity justly belongs and as the nature of their case admits.

And your orators pray that your honors will grant unto your orators the necessary and proper writs of subpœna issuing
30 out of and under the seal of this court, to be directed to the said James R. Millner, John P. Millner, and J. D. Blair, the

administrator of Joseph T. Millner, deceased, commanding them and each of them, by a certain day and under a certain penalty therein named, to appear before your honor and the circuit court of the United States, sitting as a court of equity, in Danville, Virginia, and then and there answer the premises and abide by the orders and decrees of the court herein to be rendered.

And your orators will ever pray, &c.

ROBERT G. HOFFMAN.
CHARLES O'DONNELL LEE.

BERKELEY & HARRISON,
GREEN & MILLER,
Solicitors for Complainants.

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

I, Felix R. Sullivan, a notary public in and for said city & State, do certify that R. G. Hoffman & C. O'Donnell Lee, whose names are signed to the foregoing bill, this day appeared before me in my said city & made oath that the facts stated therein, so far as stated
31 upon their own knowledge, are true, & so far as stated upon information and belief they believe the same to be true.

Given under my hand & official seal this 26th day of June, 1886.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Millner & *als.* Bill. Filed June 30, 1885. Chas. Martin, clerk.

On the same day, to wit, on the 30th day of June, 1885, in the clerk's office of the circuit court aforesaid, the plaintiffs, by their counsel, did file with their aforesaid bill certain exhibits; which said exhibits are in the words and figures following, to wit:

EXHIBIT WITH PLAINTIFFS' BILL, HOFFMAN No. 1.

BALTIMORE, *5th March*, 1873.

Joseph T. Millner, on the part of Millner Brothers, agrees to deliver to Hoffman, Lee & Co., at the depot of the Richmond
32 & Danville railroad, in the town of Danville, Va., 16,000 lbs. twist tobacco branded "Jas. R. Milner's Extra Golden Twist," say 8,000 lbs. during the month of July, 1873, & 8,000 lbs. during the month of August, 1873, or prior thereto, the above tobacco to be equal in all respects to the tobacco branded as above and made by Jas. R. Millner in the summer of 1872.

Should Hoffman, Lee & Co. claim *that* any portion of the above tobacco contracted to be delivered during the months of July and August as above to be inferior to said brand of tobacco, the standard being that of said brand worked in the summer of 1872, said claim to be referred to Tipton Tinsley, on the part of Hoffman, Lee & Co., and to B. F. Partlett, on the part of Milner Brothers. These fail-

ing to agree, they have the right to call in a third person; the difference in quality of stock, workmanship, condition, &c., assessed between the tobacco furnished by Millner Bros. & the tobacco worked by Jas. R. Millner in 1872, as above specified, to constitute a just claim on the part of Hoffman, Lee & Co. against Millner Bros.

33 Millner Bros. agree that the above tobacco shall be worked in ½rd boxes, each box containing about 45 lbs. and the lumps to run 4 oz. & 2 ply.

In consideration of the satisfactory delivery of the above-stated 16,000 lbs. Extra Golden Twist, Hoffman, Lee & Co. agree to make a title to said Millner Bros. of the property contracted to be conveyed to Hoffman, Lee & Co. by Jas. R. Millner & wife on 28th day of February, 1873, comprising 200 acres (more or less), dwelling, factory, fixtures, and all other improvements.

MILLNER BROS. [SEAL.]
HOFFMAN, LEE & CO. [SEAL.]

Signed sealed and delivered in duplicate in presence of—
(Signed) W. R. HOFF.
" W. M. CONWAY.

It is understood that if Hoffman, Lee & Co. desire it, we will make the Extra Golden Twist 3-ply, 5-oz. lumps.

BALTO., 26*th Sept.*, 1873.

The within contract has been satisfactorily settled. The sixteen thousand pounds Extra Golden Twist not coming up to

34 standard, an allowance of five (5c.) cents per pound has been accepted as satisfactory, in part payment of which Hoffman, Lee & Co. have accepted seven hundred and fifty-two (752) pounds Extra Golden Twist at a valuation of $225.60; the balance, $574.40, Millner Bros. agree to cover by shipment of tobaccos as soon as stamp can be procured.

MILLNER BROS.,
By J. T. M.

Endorsed: Hoffman, Lee & Co. *vs.* Millner & *als.* Exhibit with Plaintiffs' Bill, Hoffman No. 1. Filed June 30th, 1885. Chas. Martin, clerk.

And again on the same day, to wit, on the 30th day of June, 1885, in the clerk's office of the court aforesaid, the plaintiffs, by their counsel, did file with their said bill certain exhibits; which said exhibits are in the words and figures following, to wit:

EXHIBIT WITH PLAINTIFFS' BILL, HOFFMAN NO. 2.

This deed, made the 15th day of March, in the year eight-

35 een hundred and seventy-three, between James R. Millner, of Pittsylvania county, Virginia, and Sallie E. Millner, his wife, parties of the first part, and Robert G. Hoffman, of the city of Bal-

timore, Maryland, for and on behalf of himself and Charles O'Donnell Lee, as partners under the firm and style of Hoffman, Lee & Co., party of the second part, witnesseth:

That whereas the said James R. Millner, by his deed dated the 13th day of February, 1871, in order to secure to the said Hoffman, Lee & Co. the payment of the sum of ($15,000) fifteen thousand dollars, to be advanced in 1871 by the said Hoffman, Lee & Co. to the said James R. Millner, did grant and convey by way of mortgage to the said Robert G. Hoffman the land, buildings, improvements, fixtures, and appliances hereinafter described, and afterwards the said James R. Millner, by his deed dated the 3rd of May, 1872, in order to secure the payment of further advances to be made by the same to the same in 1872, did extend and continue in force the
36 aforesaid mortgage deed, as will more fully appear by reference to said deeds, both duly recorded in the county court of Pittsylvania; and whereas upon a settlement of the accounts of the said advances secured as aforesaid the said James R. Millner is now found to be justly indebted to the said Hoffman, Lee & Co. in the sum of $15,758.67, which sum, it is agreed between the parties, far exceeds the value of all the said mortgaged property; but the said Hoffman, Lee & Co., at the instance and request of the parties of the first part, have consented and agreed to accept the said property, free of all claims at law or in equity of the parties of the first part or either of them, in full satisfaction and discharged of the said debt, releasing all of said debt over and above the value of the said property:

Now, therefore, the parties of the first part, in consideration of the premises and especially in consideration of the said debt of $15,758.67, which is hereby satisfied and discharged, do grant, convey, release, and confirm unto the said Robert G. Hoffman, his heirs & assigns forever, to the use and
37 benefit of the said firm of Hoffman, Lee & Co. all the estate, right, title, and interest whatsoever at law or in equity of them, the said parties of the first part, and of each of them, and particularly the equity of redemption and the contingent dower and right of dower in the mortgaged property aforesaid, namely, all that certain tract or parcel of land containing (200) two hundred acres, more or less, lying in the county of Pittsylvania aforesaid and bounded as follows: By the lands of John R. Millner, Dr. J. C. James, John D. Millner, & Samuel Harvey, dec'd, and more particularly described in a deed from John R. Millner and Eliza A., his wife, to the said James R. Millner, dated 9th April, 1867, recorded in the county court aforesaid, together with all & singular the buildings, improvements, & appurtenances whatsoever to the said tract belonging, including the tobacco factory erected thereon & all the fixtures and appliances thereto belonging. It is understood and agreed between the parties that since the date of the last-
38 mentioned mortgage deed a portion of the said fixtures, with the written consent of the said Hoffman, Lee & Co., was sold and delivered by the said James R. Millner to Millner Bros., and

that sale is not to be affected or disturbed by anything contained in this present deed.

Witness the following signatures and seals the day and year first above written.

JAMES R. MILLNER. [SEAL.]
SALLIE E. MILLNER. [SEAL.]

PITTSYLVANIA COUNTY, *To wit:*

I, Benjamin Gray, a notary public for the county of Pittsylvania, in the State of Virginia, do certify that James R. Millner, whoes name is signed to the foregoing writing, bearing date on the 15th day of March, 1873, has this day acknowledged the same before me in my county aforesaid.

Given under my hand this 15 day of March, 1873.

BENJAMIN GRAY, *N. P.*

STATE OF VIRGINIA, *County of Pittsylvania,* } *To wit:*

39 I, Benjamin Gray, a notary public for the county of Pittsylvania, in the State of Virginia, do certify that Sallie E. Millner, the wife of James R. Millner, whoes names are signed to the foregoing writing, bearing date on the 15th day of March, 1873, has this day personally appeared before me in my county aforesaid, &, being by me examined privily and apart from her said husband and having the writing aforesaid fully explained to her, she, the said Sallie E. Millner, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 15th day of March, 1873.

BENJAMIN GRAY, *N. P.*

In the clerk's office of the county court of Pittsylvania county, on the 4th day of September, 1873, the foregoing writing was admitted to record upon the certificates of its acknowledgment thereto annexed.

Teste. L. SCRUGGS, *Clk.*

40 Endorsed: Filed June 30th, 1885. Chas. Martin, clerk. Hoffman from J. R. Millner & wife. Deed, release &c. Exhibit Hoffman No. 2. Recorded on page 3158 & examined.

And on the same day the following was filed as Exhibit Hoffman No. 3, and is in the words and figures following, to wit:

This deed, made the 10th day of June, A. D. 1874, between Robert G. Hoffman and Charles O'Donnell Lee, partners under the style of Hoffman, Lee & Co., of Baltimore, Maryland, and Matilda J. Lee, the wife of the said Charles O'Donnell Lee, parties of the first part, and John P. Millner and Joseph T. Millner, partners under the style of Millner Brothers, of Pittsylvania county, Virginia, parties of the second part, witnesseth: That, in consideration of five thousand dollars of lawful money, the parties of the first part do grant,

with special warranty, unto the parties of the second part the following property, viz: All that tract or parcel of land lying in said
41 county of Pittsylvania and containing (200) two hundred acres, more or less, and bounded by the lands of J. R. Millner, J. C. James, John D. Millner, and Samuel Harvey, and more particularly described in a deed from John R. Millner & wife to James R. Millner, dated April 9th, 1867, recorded in the county court of said county, and all and singular the buildings, improvements, and appurtenances whatsoever to the said tract of land belonging, including the tobacco factory erected thereon and the fixtures and appliances thereto belonging, being the same property which was conveyed to the said Robert G. Hoffman by the said James R. Millner by deed for mortgage dated 13th Feb., 1871, and afterwards by the said James R. Millner & his wife by their deed of conveyance, release, and confirmation dated the 15th day of March, 1871, both which last-mentioned deeds are also recorded in the county court aforesaid, said conveyance having been made to the said Robert G. Hoffman for the benefit of the said firm of Hoffman, Lee & Co.

42 Witness the following signatures and seals:

ROBERT G. HOFFMAN. [L. S.]
C. O'DONNELL LEE. [L. S.]
MATILDA J. LEE. [L. S.]

STATE OF MARYLAND, *City of Baltimore,* } *sc:*

I, Th. Harris Hodges, a notary public in and for the city of Baltimore, in the State of Maryland, do certify that Robert G. Hoffman and Charles O'Donnell Lee, whoes names are signed to the foregoing writing, bearing date the 10th day of June, 1874, have severally acknowledged the same before me in the said city of Baltimore.

Given under my hand this 10th day of June, 1874.

[SEAL.] TH. HARRIS HODGES,
Notary Public.

STATE OF MARYLAND, *City of Baltimore,* } *sc:*

I, Th. Harris Hodges, a notary public in and for the city of Baltimore, in the State of Maryland, do certify that Matilda
43 J. Lee, the wife of Charles O'Donnell Lee, whoes names are signed to the foregoing writing, bearing date the 10th day of June, 1874, this day personally appeared before me in said city of Baltimore, and, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Matilda J. Lee, acknowledged the said writing to be her act, and declared that she had willingly execute- the same and does not wish to retract it.

Given under my hand this 10th day of June, 1874.

[SEAL.] TH. HARRIS HODGES,
Notary Public.

In the clerk's office of the county court of Pittsylvania county, on the 22nd day of August, 1874, the foregoing deed was admitted to record upon the certificates of its acknowledgments thereto annexed.

Teste: L. SCRUGGS, *Clk.*

A copy.
Teste: W. B. SHEPHERD, *Clk.*

1885, June 25th.

44 Endorsed: Millner Bros. from Hoffman, Lee & Co. Copy. Deed. Hoffman No. 3. Fee, &c., 70c., ch'd to H., L. & Co. B. & H., att'ys. Filed June 30, 1885. Chas. Martin, clerk.

And on the same day the following was filed with the plaintiffs' bill and marked Exhibit Hoffman No. 4, which is in the words and figures following, to wit:

This deed, made this 3rd day of September, 1874, between John P. Millner and Joseph T. Millner, partners under the firm and style of Millners Bros., and Lucy G. Millner, wife of John P. Millner, and Mollie C. Millner, wife of Joseph T. Millner, parties of the first part, and James R. Millner, party of the second part, all of the county of Pittsylvania and State of Virginia, witnesseth: That, for and in consideration of the sum of six thousand dollars by James R. Millner to the said Millner Bros. paid or secured to be paid at and before the sealing and delivering of this deed, the parties of
45 the first part do grant, with special warranty, unto the said James R. Millner all that tract or parcel of land, with the improvements thereon and appurtenances thereto belonging, including the tobacco factory erected thereon and the fixtures and appliances thereto belonging, situated in the county of Pittsylvania, Virginia, containing about two hundred acres, more or less, and bounded by the lands of J. R. Millner, J. C. James, John D. Millner, and Samuel Harvey, and which is more particularly described in a deed from John R. Millner & wife to James R. Millner, dated Ap'l 9th, 1867, and of record in the county of Pittsylvania, being the same property conveyed to the said John P. Millner and Joseph T. Millner, as partners as Millner Bros., by Robert G. Hoffman and Charles O'Donnell Lee, as partners under the firm and style of Hoffman, Lee & Co., and the wife of said Lee by deed dated 10th June, 1874, which is recorded in the county court of Pittsylvania county:

To have and to hold the said property to him, the said James R. Millner, and to his heirs and assigns forever.

46 Witness the following signatures and seals this 3rd day of September, 1874:

JOHN P. MILLNER. [SEAL.]
JOSEPH T. MILLNER. [SEAL.]
LUCIE G. MILLNER. [SEAL.]
MOLLIE C. MILLNER. [SEAL.]

STATE OF VIRGINIA,
County of Pittsylvania, } *To wit:*

I, R. J. Hatcher, a notary public in and for the county of Pittsylvania and State of Virginia aforesaid, do certify that John P. Millner and Joseph T. Millner, whoes names are signed to the foregoing writing, bearing date on the 3rd day of September, 1874, have severally acknowledged the same before me in my county aforesaid.

Given under my hand this 3rd day of September, 1874.

R. J. HATCHER, *N. P.*

STATE OF VIRGINIA,
County of Pittsylvanta, } *To wit:*

I, R. J. Hatcher. a notary public in and for the county of Pittsylvania and State of Virginia aforesaid, do certify that Lucie G. Millner, wife of John P. Millner, and Mollie C. Millner, wife of Joseph T. Millner, whoes names are signed to the foregoing writing,
47 bearing date on the 3rd day of September, 1874, this day personally appeared before me in the county of Pittsylvania aforesaid, and, being each and severally examined by me privily and apart from their said husbands and having the writing aforesaid fully explained to them, they, the said Lucy G. Millner and Mollie C. Millner, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 3rd day of September, 1874.

R. J. HATCHER, *N. P.*

In the clerk's office of the county court of Pittsylvania county, on the 3rd day of September, 1874, the foregoing deed was admitted to record upon the certificates of its acknowledgement thereto annexed.

Teste: L. SCRUGGS, *Cl'k.*

A copy.
Teste: W. B. SHEPHERD, *Cl'k.*

1885, June 25th.

Endorsed: Millner, James R., from Millner Bros. Copy. Deed. Hoffman, Lee & Co. *vs.* Jas. R. Millner, &c. Exhibit Hoffman No. 4 with bill. Fee & act, 75c., ch'g'd to H., L. & Co. B. & H., att'ys. Filed June 30, 1885. Chas. Martin, clerk.

48 And again, on the same day, to wit, on the 30th day of June, 1885, the plaintiffs filed with their bill the following, which is marked Exhibit Hoffman No. 5 and is in the words and figures following, to wit:

Mr. Jas. R. Millner, Axton, Va., in account with Hoffman, Lee & Co., Balto., Md.

Int. at 6 per cent.

1873.			
Jan'y 20.	To balance due Hoffman, Lee & Co., as per account rendered		$23,360 61
	" int. to May 29th, 1873, 129 days		502 25
	Due May 29, '73		$23,862 86
May 29.	By credit, as per acc't sales		2,459 02
			21,403 84
	To int. June 14th, 1873, 16 days		57 07
	Due June 14, '73		$21,460 91
June 14.	By credit, as per acc't sales		2,419 26
			$19,041 65
	To interest to Sept. 26th, 1873, 104 days		330 05
	Due Sept. 26, '73		19,371 70
Sept. 26.	By credit for allowance from Millner Bros. for difference in price of tobacco		574 40
			18,797 30
	To interest to March 4, 1874, 159 days		498 12
	Due March 4th, '74		$19,295 42
1874.			
March 4.	By credit, as per acc't sales		5,239 16
			14,056 26
	To interest to June 1st, 1885, 11 years 89 days		9,485 45
	Due June 1st, 1885		$23,541 71

49 Baltimore, June 10th, 1885.

WM. T. THELIN,
Accountant.

STATE OF MARYLAND, }
City of Baltimore. }

I, John T. Maddox, a justice of the peace for the State of Maryland in and for the city of Baltimore, do certify that Wm. T. Thelin, whose name is signed to the foregoing account stated, this day personally appeared before me in my said city and made oath that the same has been carefully made up by him from the books and papers in the office of Hoffman, Lee & Co.; that he believes the same to be true and correct, according to said books and papers kept, in due course of business, in said office.

JOHN T. MADDOX, *J. P.*

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Hoffman No. 5 with bill. Filed June 30, 1885. Chas. Martin, clerk.

And on the same day, to wit, June 30, 1885, the following was filed with the bill of the plaintiffs and marked Exhibit Hoffman No. 6, and is in the words and figures following, to wit:

50 *Account Sales of* 122 *Boxes Manufactured Tobacco Received Aug.* 16–21, *Sep.* 4, 9, 18, 20, *Nov.* 4, 1872, *& on Hand Jan.* 20, '73, *and Sold by Hoffman, Lee & Co. for Account of Mr. Jas. R. Millner.*

Date.	Package.	Brand.	Time.	Lbs.	Price.	
1873.						
Jan. 18	2½	Golden Twist (brand)	60 d's	122	52c.	$63 44
Feb. 18	39	Gold Lumps	"	2,233	62	1,384 46
21	1	"	"	57	63	35 91
Ma'ch 4	5	"	"	286	"	180 18
Ap'l 5	5	"	"	289	"	182 07
7	28	"	90 d's	1,591	60	954 60
10	13	"	60 d's	748	59	441 32
"	29	"	"	1,493	"	880 87
	122½ boxes					$4,122 85

Fr't, dr'ge, & labor charged in previous account sales.

Charges:

Storage	$22 16	
Fire ins'ce	9 89	
Excise tax, 6,819 lbs., 20c.	1,363 80	
Interest on tax from Aug. 30, '72, to maturity of sales	61 84	
Commission, 5 per cent.	206 14	
		1,663 83
Net proceeds due May 26–29, 1873		$2,459 02

E. & O. E.
Baltimore, June 10th, 1885.

HOFFMAN, LEE & CO.,
Per S. L. MITCHELL.

51 Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Hoffman No. 6 with bill. Filed June 30, 1885. Chas. Martin, clerk.

The following was filed with plaintiffs' bill and marked Exhibit Hoffman No. 7, viz:

Account Sales of 123 *Boxes Manufactured Tobacco Received Aug.* 5-22, *Sep.* 6, *& Oct.* 16, 1871, *and on Hand Jan.* 20, '73, *and Sold by Hoffman, Lee & Co. for Account of Mr. Jas. R. Millner.*

Date.	Package.	Brand.	Time.	Lbs.	Price.	
1873.						
Feb'y 11	1¼	H'y Co. Fig	Cash	29	50c.	14 50
20	25½	Gold Lumps	60 d's	1,447	62	897 14
Mar. 18	3	"	"	172	65	111 80
April 16	10	" av'g	75 d's	568	60	340 80
17	40	"	60 d's	2,258	58	1,309 64
28	34	"	"	1,933	"	1,121 14
May 3	10	"	90 d's	571	60	342 60
	123 boxes					$4,137 62

Fr't, dr'g, & labor charged in previous ac. sales.

Charges:

Storage	25 90	
Fire ins'ce	13 24	
Excise tax, 6,998 lbs., @ 20c.	1,399 60	
Interest on tax Aug. 6, '72, 312.67, to maturity of sales	72 74	
Commission, 5 per ct.	206 88	
		1,718 36
Net proceeds due June 11-14, 1873		$2,419 26

E. & O. E.
Baltimore, June 10, 1885.

HOFFMAN, LEE & CO.,
Per C. L. MITCHELL.

52 Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Hoffman No. 7. Filed June 30, 1885. Chas. Martin, clerk.

The following was filed with the bill of the plaintiff, and is marke- Exhibit Hoffman No. 8, and is in the words and figures following, to wit:

Account Sales of 365 *Boxes Manufactured Tobacco Received Aug.* 13; *Sept.* 17, 1873, *and Sold by Hoffman, Lee & Co. for Mess. Millner Bros. for ⅞ of Jas. R. Millner.*

Date.	Package.	Brand.	Time.	Lbs.	Price.	
1873.						
Oct. 4	5½	Extra Golden Twist	90 d's	231	60c.	$138 60
6	30	"	60 d's	1,354	"	812 40
1	75	"	90 d's	3,567	"	2,140 20
27	5	"	"	233	"	139 80
Nov. 6	10	"	60 d's	484	"	290 40
14	25	"	90 d's	1,176	"	705 60
Dec. 10	25	"	60 d's	1,145	"	687
18	28	"	"	1,273	"	763 80
1874.						
Jan. 5	162	"	4 mos.	7,299	55	4,014 45
	365½ boxes					$9,692 25
Charges, less allowance O. b'k entry Nov. 11, '73						40 20
						9,652 05

NOTE.—See on next page for continuance of these figures. (Over.)

	(Cont'd:)		
53	Charges, forwarded		$9,652 05
	Freight, 165.95; drayage, 7.30	$173 25	
	Labor, 21.90; storage, 67.85	89 75	
	Fire ins'ce	31 01	
	*Tax p'd s. d's (av'g Aug. 23, '73)	3,514 43	
	Interest on charges, &c., to maturity of sales, Aug. 24, '73	121 85	
	Commission, 5 per ct.	482 60	
			4,412 89
	Net proceeds due 1-4 March, 1874		$5,239 16

*Tax your sight drafts	Aug. 8, 1873	$1,297 20
	14,	871 60
	Sept. 8,	887
	17,	458 63
		3,514 43

E. & O. E.
Baltimore, June 10th, 1885.

HOFFMAN, LEE & CO.,
Per C. L. MITCHELL.

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Hoffman No. 8. Filed June 30th, 1885. Chas. Martin, clerk.

And on the same day the following was filed with the plaintiffs' bill and marked Exhibit Hoffman No. 9, and is in the words and figures following, to wit:

Memo. of Property Given by Jas. R. Millner to R. G. Hoffman June 12, '85, *as Standing in His Name.*

	Value.
Bob Hodnet place, declined $1,800	$1,500
Brick farm	1,500
One place sold, not paid for	1,500
	$4,500
(Over.)	
54 Am't forw'ded	$4,500
Home place, cost $25,000	12,000
Danville lot and house	5,000
	21,500
Estimaded bal. with J. P. Pleasants & Son	10,000
Estimated debts, $3,500	$31,000

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Hoffman No. 9 with bill. Filed June 30, 1885. Chas. Martin, clerk.

And again, on the same day, the following was filed with the plaintiffs' bill and marked Exhibit Boyland No. 1, and is in the words and figures following, to wit:

BUFFALO LITHIA SPRINGS, VA., *June 6th*, 1885.

R. G. Hoffman, Esq., Baltimore, Md.

MY DEAR ROBERT: Mr. Jas. R. Millner, of Pittsylvania Co., Va., a patient of mine now at the springs, is suffering from that form of Bright's desease known as chronic interstitical nepheitis. The cerebral symptoms are such as to render him incapable of transacting *and* business, and he desires me, therefore, to inform you of his condition, which is very feeble; also to say that he received
55 your letter.

Although Mr. Peatross wrote you the facts in the case he would prefer to see you personally, and should you be passing this way soon he would like very much to have you stop over a day.

With kind regards, yours very truly,

G. HALSTEAD BOYLAND.

R. G. Hoffman, Esq.

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Boyland No. 1, with bill. Filed June 30th, 1885. Chas. Martin, clerk.

And on the same day the following was filed with the plaintiffs' bill and marked Exhibit Boyland No. 2, and is in the words and figures following, to wit:

Confidential.

BUFFALO LITHIA SPRINGS, VA., *June 10th*, 1885.

Robert G. Hoffman, Esq.

MY DEAR ROBERT: Your telegram received. Mr. Millner is in no immediate danger and does not want to put you to the
56 trouble of coming here unnecessarily, although it might be better for him to have a talk with you and get this business off his mind. From a professional point of view he would derive some benefit thereby, but is inclined to worry about other matters also, and it is for you to judge from the nature of the case whether you should come or not.

You could arrive at Clarksville about 9 p. m. and either drive over the same evening or early next morning; cannot very conveniently meet you, but will be on the lookout for you and see you first.

Please reply by letter. The messenger charges $2.00 for each telegram delivered here.

Very sincerely yours,

G. HALSTEAD BOYLAND.

Rob't G. Hoffman, Esq.

Endorsed: Hoffman, Lee & Co. *vs.* Millner *& als.* Exhibit Boyland No. 2. Filed June 30, 1885. Chas. Martin, clerk.

And again, on the same day, the following was filed with
57 plaintiffs' bill and marked Exhibit Boyland No. 3, and is in the words and figures following, to wit:

BUFFALO LITHIA SPRINGS, *June 10th.*

MY DEAR MR. HOFFMAN: I would like for you to call and see me immediately. I would like to have the worry of the business off my mind.

Your- truly, JAS. R. MILLNER,
By G. H. B.

P. S.—I think it would be advisable for you — call and see Mr. Millner as soon as possible.

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Boyland No. 3. Filed June 30, 1885. Chas. Martin, clerk.

And again, on the same day, the following was filed with the bill of the plaintiffs and marked Exhibit Millner No. 1, and is in the words and figures following, to wit:

58 At a county court held for the county of Pittsylvania on the 15th of October, 1883, on the motion of J. D. Blair, who made oath as the law directs and *intends* into a bond in the penalty of twelve thousand dollars, conditioned according to law, with Richard White his surety therein (who justified on oath as to his sufficiency, and which said bond, being acknowledged by the obligors therein, is ordered to be recorded), certificate is granted the said J. D. Blair for obtaining letters of administration on the estate of J. T. Millner, dec'd, in due form.

A copy.
Teste: W. B. SHEPHERD, *Clk.*
June 25, '85.

Endorsed: Hoffman, Lee & Co. *vs.* Jas. R. Millner, &c. Exhibit Millner No. 1. Filed June 30, 1885. Chas. Martin, clerk.

On the same day the following was filed with the bill of the plaintiffs and was marked Peatross No. 1 Exhibit, and is in the words and figures following, to wit:

DANVILLE, VA., *May 12th*, 1885.

Mess. Hoffman, Lee & Co., Baltimore, Md.

59 GENTLEMEN: Some days since the writer was sent for by J. R. Millner, Esq., who is now very feeble in mind and body. I found him much*ed* troubled about a wrong he said he had done you and himself at the time he compromised his indebtedness with you, some years ago. He says he withheld from you at that time information as to some of his property, and was guilty therefore of practicing a deception upon you, for which he feels condemned and which he wishes to confess and ask pardon for; says he regrets that he is not in a condition to do more than simply confess his wrong. I promised him I would make known his desire to you. I think it will be a relief to him to know that I have done so, and if you can find it in your hearts to write him a forgiving letter you will likely confer a good upon a man who I regard as an object of compassion.

Y'rs respectfully, R. W. PEATROSS.

60 Endorsed: Hoffman, Lee & Co. *vs.* Millner, J. R., &c. Exhibit Peatross No. 1. Filed June 30, 1885. Chas. Martin, clerk.

And on the same day the following exhibit was filed and marked Exhibit Peatross No. 2, and is in the words and figures following, to wit:

MAY 13, '85.

Mr. R. W. Peatross, Danville, Va.

DEAR SIR: We have your esteemed favor of 12th inst., and in accordance with its contents we enclose a letter for Jas. R. Millner, which you will oblige us by conveying to him if you feel satisfied that his statement of inability to make restitution is truthful.

Very respectfully, HOFFMAN, LEE & CO.

Endorsed: Hoffman, Lee & Co. *vs.* Millner. Exhibit Peatross No. 2. Filed June 30th, 1885. Chas. Martin, clerk.

61 The following was filed on the same day and was marked Exhibit Peatross No. 3, and is in the words and figures following, to wit:

MAY 13, '85.

Mr. Jas. R. Millner.

DEAR SIR: Mr. R. W. Peatross has, at your instance, communicated to us your confession that the pecuniary loss entailed upon us by you was caused by false statements upon which our release to you was based.

This confession of wrong is coupled with the assurance that you are powerless to make pecuniary restitution.

Believing that no man at such a solemn time would utter aught than the truth, we freely extend to you the forgiveness you crave, with the earnest hope that this act may assist you to remove the remorse you express.

Very sincerely yours, HOFFMAN, LEE & CO.

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Peatross No. 3. Filed June 30, 1885. Chas. Martin, clerk.

62 The following was filed on the same day and is marked Exhibit Peatross No. 4, and is in the words and figures following, to wit:

R. W. Peatross, Esq., Danville, Va.

DEAR SIR: On 13th ultimo we replied to your valued favor of the 12th, enclosing a letter for Mr. Jas. R. Millner. During our recent visit to Danville we were so closely occupied that we did not have the opportunity of asking you whether the above letters were received, as we had rec'd no reply from either Mr. Millner or yourself.

Be so kind as to let us hear from you, and oblige

Yours very respectfully, HOFFMAN, LEE & CO.

Endorsed: Hoffman, Lee & Co. *vs.* Millner, &c. Exhibit Peatross No. 4. Filed June 30th, 1885. Chas. Martin, clerk.

And on the same day the following postal card was filed and marked Exhibit Peatross No. 5, & is as follows, to wit:

63 (Addressed:) Mess. Hoffman, Lee & Co., Baltimore, Md.
(Received June 9. Answered.)

DANVILLE, VA., *June* 8, 1885.

GENTLEMEN: Your letter was received and forwarded to Millner. He has not been in any condition to acknowledge rec'pt since. He is now at the springs. His mind is much impaired.

Y'rs truly, R. W. PEATROSS.

Endorsed: No. 36. C'h C. Hoffman, Lee & Co. *vs.* Millner Bros. Exhibit Peatross No. 5. Filed June 30, 1885. Chas. Martin, clerk.

64 And on another day, to wit, on the 10th day of September, A. D. 1885, in the clerk's office of the circuit court of the United States for the western district of Virginia, the plaintiff-, by counsel, appeared and filed the following depositions, marked "original depositions of Hoffman & others;" which said depositions are in the word- and figures following, to wit:

The following letter was filed with said depositions, viz:

AUGUST 13TH, 1885.

Hon. A. M. Aiken, counsel of Jas. R. Millner *vs.* Hoffman, Lee & Co.

DEAR SIR: Thanking you for your courtesy in waiving your right to a new notice because of the telegraphed change of office of our clients, Hoffman, Lee & Co., from 59 Exchange Place, we notify you that their present address is therefore the office at which, by your consent, the depositions will be taken, *is* —— building, Gay & Lombard streets, Baltimore, Md.

Very truly yours, BERKELEY & HARRISON.

65 The following notice for depositions in Baltimore to be taken on September 1st, 1885, was this day filed with said depositions, and is in the words and figures following, to wit:

To James R. Millner; John P. Millner, in his own right and as surviving partner of himself and Joseph T. Millner, dec'd, late partners as Millner Bros., and Joseph D. Blair, administrator of said Joseph T. Millner, dec'd:

Please take notice *the* we shall, on Tuesday, September the 1st, 1885, at the office of Hoffman, Lee & Co., No. 59 Exchange Place, Baltimore, Md., between the hours of sunrise and sunset, take the depositions of the following witnesses, namely, Robert G. Hoffman, Chas. O'Donnell Lee, Wm. T. Thelin, Richard H. Pleasants, Jacob Hall Pleasants, Charles Lee Mitchell, Dr. F. T. Miles, Jacob H. Wright, Joseph B. Stafford, Philip A. Ball, all of said city of Baltimore, to be read in our behalf in the chancery suit now pending in

the circuit court of the United States for the western district
66 of Virginia, at Danville, Virginia, wherein we are plaintiffs and your are defendants.

If for any cause the taking of said depositions shall not be commenced, or, if commenced, shall not be concluded on said day, the same will be continued at the same place and between the same hours from day to day until taken and completed.

HOFFMAN, LEE & CO.,
By GREEN & MILLER,
BERKELEY & HARRISON,
Counsel.

August 12th, 1885.

The marshal's return thereon is as follows, viz:

Executed this 12th day of August, 1885, by delivering a true copy of the within notice to John P. Millner, in the town of Danville, Virginia, & within the western district of Virginia.

SAMUEL L. GRAHAM,
U. S. Marshal, Western District,
By JAS. H. BOUGHAN,
Dept. U. S. Marshal, Western District of Va.

Fee, $2.00.

Executed this 12th day of August, 1885, by delivering a true copy of the within notice to J. D. Blair, in the town of Danville,
67 Virginia, & within the western district of Virginia.

SAMUEL L. GRAHAM,
U. S. Marshal, Western Dist.,
By JAS. H. BOUGHAN,
Deputy U. S. Marshal, Western District of Virginia.

Fee, $2.00.

Executed this 12th day of August, 1885, on A. M. Aiken, attorney-at-law, counsel of James R. Millner, by delivering a true copy of the within notice to said A. M. Aiken, as counsel of said James R. Millner, and notifying him that it was served upon him as such counsel, in said town of Danville and State of Virginia & within the western district of Virginia.

SAMUEL L. GRAHAM,
U. S. Marshal, Western District,
By JAS. H. BOUGHAN,
Dept. U. S. Marshal, Western District of Virginia.

Fees, $2.00.

Endorsed: Hoffman, Lee & Co. *vs.* Millner & *als.* Original notice for depositions in Balto.

68 The following notice for depositions to be taken in Baltimore on September 1st, 1885, was this day filed with said depositions, and is in the words and figures following, to wit:

To James R. Millner; John P. Millner, in his own right & as surviving partner of himself & Joseph T. Millner, dec'd, late partners as Millner Bros., and Joseph D. Blair, administrator of said Joseph T. Millner, dec'd:

Please take notice that we shall, on Tuesday, September the 1st, 1885, at the office of Hoffman, Lee & Co., No. 59 Exchange Place, Baltimore, Md., between the hours of sunrise & sunset, take the depositions of the following witnesses, namely, Robert G. Hoffman, Chas. O'Donnell Lee, Wm. T. Thelin, Richard H. Pleasants, Jacob Hall Pleasants, Charles Lee Mitchell, Dr. F. T. Miles, Jacob H. Wright, Joseph B. Stafford, & Philip A. Ball, all of the said city of Baltimore, to be read in our behalf in the chancery suit now pending in the circuit court of the United States for the western district of Virginia, at Danville, Virginia, wherein we are plaintiffs and you are defendants.

69 If for any cause the taking of said depositions shall not be commenced, or, if commenced, shall not be concluded on said day, the same will be continued at the same place and between the same hours from day to day until taken and completed.

HOFFMAN, LEE & CO.,
By GREEN & MILLER,
BERKELEY & HARRISON,
Counsel.

August 12, '85.

Endorsed: Executed this 14th day of August, 1885, by delivering a true copy of the within notice to James R. Millner at Buffalo Lithia Springs, in the county of Mecklenburg, Virginia. A. B. Moore.

STATE OF VIRGINIA, }
County of Mecklenburg. }

I, W. T. Atkins, a notary public in & for said county of Mecklenburg & State of Virginia, do certify that A. B. Moore, whose name is signed to the foregoing statement, this day personally appeared before me in my said county and made oath upon the Holy Evangelists of God that he did deliver a true copy of the within no-
70 tice to James R. Millner at Buffalo Lithia Springs, on the 14th day of August, 1885, as stated in said statement aforesaid.

Given under my hand this 14th day of August, 1885.

W. T. ATKINS, *N. P.*

Endorsed: Hoffman, Lee & Co. *vs.* Millner, Jas. R. & *als.* Original notice of depositions in Baltimore.

Caption.

Deposition of Robert G. Hoffman and others, taken, in pursuance of notice hereunto attached, at the office of Hoffman, Lee & Co., in the city of Baltimore and State of Maryland, on Tuesday, the first day of September, 1885, to be read in behalf of the said Hoffman, Lee & Co., in a suit of Hoffman, Lee & Co. *versus* Jas. R. Millner and others, now pending in the United States circuit court for the western district of Virginia.

Present: James P. Harrison, for plaintiffs, and W. T. Harris, for defendants.

71 Objection.—Counsel for defendants objects to the taking of these depositions or the introduction of any witness upon the ground that Jas. R. Millner, one of the defendants in this suit, was at and before the institution of said suit and now is insane and incompetent to testify, and that under the Code of Virginia the plaintiffs cannot testify in their own behalf.

In reply to the foregoing, plaintiffs, by counsel, state that Jas. R. Millner has never been adjudged insane; that they are advised by competent authority, medical & other, that he was not insane at a very recent date, and, therefore, if insane now it must have been only within a few days past, & they are without valid evidence of such fact, & therefore proceed with their deposition notwithstanding said objection.

Robert Gilmer Hoffman, a witness of lawful age, being produced and sworn, deposes and says as follows:

Quest. = 1. State your name, age, residence, and occupation.

Answer. Robert Gilmer Hoffman; age, 55 years; residence, Baltimore; occupation, merchant, trading in tobacco & coffee.

72 The introduction of R. G. Hoffman, one of the plaintiffs in the cause, is objected to by the defendants' counsel upon the ground heretofore stated.

Note by Notary.—The objection to Mr. Hoffman's testimony was taken and noted by defendants' counsel before the examination of Mr. Hoffman, as indicated by Felix R. Sullivan, notary public.

Quest. = 2. Who composed the firm of Hoffman, Lee & Co.?

Answer. Rob't G. Hoffman and Chas. O'D. Lee.

Quest. = 3. When did said firm first begin business for Jas. R. Millner, the defendant?

Ans. I think in 1867 or 1868. I am not certain, but will refer to our books.

Question and answer objected to by defendants' counsel.

Quest. = 4. In what capacity did you do business with and for said Millner?

Question objected to by defendants' counsel upon the ground before stated.

Ans. to #4. As commission merchant, under certain agreements which passed between us. We furnished him with money
73 to manufacture tobacco under a contract that all allowances made by us should be devoted to purchases of leaf tobacco, which was to be manufactured & shipped to us.

Answer objected to by defendants' counsel on the ground before stated.

The general objection to the competency of this witness at the beginning of this examination is henceforth to be considered as made to every question & answer in course, without the necessity of repeating the same after each, & to this we agree.

HOFFMAN, LEE & CO.,
By JAS. P. HARRISON.

Quest. #5. What security, if any, did you require & receive for such advances?

Ans. We received a deed of trust on what he called his "Axton" farm, in Pittsylvania Co., Va.

Quest. #6. Were the moneys advanced used & invested as called for by the term- of agreement, so far as you knew at the time?

Ans. As far as we knew, they were so used.

Quest. #7. When did you settle with Jas. R. Millner & cease to represent him as his commission merchants?

74 Answer. On the 28th day of February, 1873.

Quest. #8. What was the basis of your settlement at that date?

Ans. I went down by appointment to meet Mr. Millner at that date, & after a very exhausting interview in which he assured me that that property was everything he possessed in the world I agreed to accept it for Hoffman, Lee & Co. in satisfaction for his his debt to them.

#9. Under the terms of said agreement with Millner did he have the right to use the advances made him by you otherwise than in the purchase, manufacture, & shipment of tobacco?

Question objected to by defendants' counsel, as the written agreement speaks for itself.

Ans. #9. Certainly not; such action on his part would have at once destroyed all our confidence in him.

Quest. #10. What estimate did Millner put upon the property conveyed for your security at the time of such conveyance?

Same objection as to question #9.

Answer. He estimated the property so conveyed to us to be worth fifteen thousand dollars ($15,000.00).

75 Quest. #11. At the interview of Feb'y, 1873, what estimate did Millner put upon said property?

Answer. I cannot remember that he put any estimate upon it at

that time; in lieu, I offered him that he should take the property at a valuation of $10,000.00, $2,000.00 in cash & $2,000.00 to be paid each successive year for four years; this proposition he declined.

Quest. = 12. At that interview did he state that he had diverted or failed to invest according to agreement any part of your advances?

Question objected to by defendants' counsel as leading & suggestive.

Ans. He did not.

Quest. = 13. How much of his assets did Millner agree to turn over to you in settlement?

Ans. The farm alluded to as "Axton" farm.

Quest. = 14. What else besides did he have?

Ans. All that I knew that he had was when I questioned him whether he had not animals to perform the duties of his farm & hauling, &c., which I thought ought also to be transferred to us at the same time as the farm—when he broke out with an oath,
76 saying, would I take the only thing he had, viz., his riding horse; which I finally decided to allow him to retain, as he declared he had nothing to begin the world with again.

Quest. = 15. What did the property so turned over to you in settlement of your debt prove to be worth in fact?

Answer. To the best of my recollection, the tobacco received from Millner Bros. in payment of his farm realized less than six thousand dollars ($6,000.00).

Quest. = 16. Who was present at the time of your settlement?

Ans. At the greater part of the interview between Jas. R. Millner and myself his brother, Joseph T. Millner, was present as his friend and adviser. He arrived after we had conferred about two hours.

Quest. = 17. What was the amount of debt due Hoffman, Lee & Co. on 23 January, 1873, irrespective of m'n'f't'd tobacco on hand?

Ans. Twenty-three thousand five hundred and twelve dollars and forty-six cent ($23,512.46). The principal was twenty-three thousand three hundred and sixty-six dollars and sixty-one cents ($23,366.61).

77 Quest. = 18. Examine the deed marked Exhibit Hoffman = 2 and state what the amount of indebtedness was put at on March 15, 1873, & how did you arrive at the same.

Ans. Fifteen thousand seven hundred & fifty-eight dollars and sixty-seven cents ($15,758.67), by interest, open sales, & stock of tobacco on hand, upon which valuations were placed, as per exhibit herewith filed, taken from our letter-press files, and marked Exhibit Sullivan = 1.

Quest. = 19. Why did Hoffman, Lee & Co. surrender their entire debt of over $15,000.00 for about $6,000.00 worth of property?

Ans. Because Jas. R. Millner impressed upon me the conviction that he was surrendering everything he possessed & he appealed to

me not to trammel his future by holding this debt over him, as he had a wife & family to work for.

So much of said answer as adds to or alters the written contract of settlement objected to by defendants' counsel.

Quest. # 20. Have you any letter from Jas. R. Millner written shortly after said settlement to confirm you in the statement
78 that he represented that he was surrendering all that he was possessed of? If so, produce it.

Ans. We have such a letter & herewith filed it, marked Exhibit Sullivan # 2.

Quest. 21. What, if any property, besides that deed to you did Millner have at that time?

Ans. At that time I knew of none, but believed that he had given us everything.

Quest. # 22. If you had known that he had failed to use advances as agreed & had in hand $10,000.00 or $12,000.00 thereof, would you have settled with him as you did?

Question objected to by defendants' counsel as leading.

Answer. Assuredly not.

Quest. # 23. Did you receive any written communication from Millner Bros. urging you to make this settlement with Jas. R. Millner or did either one of such concern visit you in his behalf?

Ans. We have a letter from Millner Bros. to that effect, & Joseph T. Millner visited us in behalf of his brother relative to a settlement. I herewith file said letter, marked Exhibit Sullivan # 3.

Quest. # 24. Prior to the consummation of the agreement of Feb'y 28, 1873, by conveyance of the property unto yourselves, did any person or persons contract with you in regard to the property
79 so conveyed? If yea, examine Exhibit Hoffman No. 1 & see if it embraces such contract.

Answer. Jos. T. Millner, on behalf of Millner Bros., did so, as shown by Exhibit Hoffman No. 1, filed with the bill.

Quest. # 25. Who comprised the firm of Millner Bros.?

Ans. Joseph T. Millner & John P. Millner.

Quest. # 26. Did Jos. T. Millner, of Millner Bros., know the status of the business of Hoffman, Lee & Co. with Jas. R. Millner?

Ans. He did.

Quest. # 27. Subsequent to Feb'y 28, 1873, did Jas. R. Millner endeavor to renew former relations with H., L. & Co. as his commission merchants?

Ans. He did.

Quest. # 28. Did Millner Bros. write you or approach you on this subject?

The introduction of Millner Bros.' letter objected to by defendants' counsel as against Jas. R. Millner.

Answer. They did.

Quest. # 29. Did J. R. Millner or Millner Bros. in the spring or summer of 1873 indicate that Hoffman, Lee & Co. might disturb

the settlement of February, 1873? If yea, please introduce any letter to said effect.

If it is sought to introduce any letter from Millner Bros. as
80 evidence against Jas. R. Millner it is objected to by counsel for Jas. R. Millner.

Ans. They did, in confirmation of which I herewith file said letter marked Exhibit Sullivan No. 4.

Quest. = 30. Did you at the time, even after receiving Sullivan = 4, suspect that there had been any fraud in the settlement of February 28, 1873?

Ans. We did not.

Quest. = 31. Please exhibit your answer to Sullivan No. 4.

The letters of Millner Bros. & the replies of Hoffman, Lee & Co. are objected to as evidence against Jas. R. Millner by counsel.

Ans. I file the original press letter book copy to Millner Bros., enclosing a letter to Jas. R. Millner, said copies being taken from our regular letter book in which our letters are copied in course of business, & I herewith file them, marked Exhibit Sullivan = 5 and Exhibit Sullivan = 6.

Quest. = 32. After closing out the tobacco on hand Feb'y 28, 1873, & the 16,000 lbs. received from Millner Bros. what further business did you have with Jas. R. Millner?

Ans. None.

81 *Quest.* = 33. Was your debt discharged by the proceeds of sales of such tobaccos?

Ans. Of course not.

Quest. = 34. From that date how did you look upon the balance left unpaid?

Ans. We looked upon it as lost.

Quest. = 35. Did Jas. R. Millner endeavor to get you not to put the deed from him to yourselves on record?

Answer. We have letters to that effect.

Quest. = 36. Examine letter from Jas. R. Millner dated April 15, 1873, and say whether or not that is one of the letters referred to; &, if so, please exhibit the same.

Ans. It is, and I herewith file it, marked Exhibit Sullivan = 7.

Quest. = 37. Did you comply with that request?

Ans. We did not.

Quest. = 38. Was the property subsequently reconveyed to Jas. R. Millner by Millner Bros.?

Ans. It was, as shown by Exhibit Hoffman = 4, filed with the bill.

Quest. = 39. Did Hoffman, Lee & Co. have any cause to doubt the finality & good faith of the settlement of 28 Feb'y, 1873, at the time thereof or subsequent thereto? If yea, when for the first time & what caused them so to do?

82 & 83 Answer. We had no cause to doubt it until May, 1885. In May, 1885, we received a letter from Mr. R. W. Peatross, filed with the bill & marked Exhibit Peatross No. 1.

Quest. # 39. Did you answer such letter? And, if so, state if your letters in answer are filed; and, if so, how they are marked.

Ans. We did answer Mr. Peatross's letter enclosing a letter of pardon to Jas. R. Millner to be delivered if the conditions attached should meet Mr. Peatross's approval. The press copies of these letters are filed with bill, marked Exhibit Peatross No. 2 & Peatross No. 3.

40. Did Mr. Peatross answer Peatross No. 3? If yea, when and under what circumstances?

Ans. It remained unanswered for several weeks, until I wrote to Mr. Peatross enquiring if he had received the letter, a press copy of which is filed with the bill, marked Peatross # 4, to which an answer was received from Mr. Peatross in a postal card, marked Peatross # 5.

Quest. # 41. What had happened, meanwhile, to make you enquire more particularly as to Millner's ability to make restitution?

84 Ans. I was summoned to Danville, Va., by my lawyers, Messrs. Berkeley & Harrison, on business connected with some property owned by my firm in Danville. During that visit I exhibited to these gentlemen, B. & H., the letter of Mr. Peatross to H., L. & Co. and a copy of H., L. & Co.'s answer to him, with the enclosed letter of pardon for Millner. I was startled to learn from them that Millner was considered a very rich man, worth probably $50,000.00 or more. I determined by their advice to institute suit should such a statement be confirmed. On returning to Balto. I consulted Bradstreet's Commercial Agency Book, from which I learned that Jas. R. Millner was estimated to be worth from $50,000.00 to $75,000.00. I then wrote the above letter of enquiry to Mr. Peatross. The morning I received his reply I received from Dr. G. Halstead Boyland, the resident physician at Buffalo Lithia Springs, Va., a letter, filed with the bill, marked Exhibit Boyland # 1.

85 Quest. Had you known Dr. Boyland before or had you ever corresponded with him?

Ans. I had known him. He had married my cousin in Europe many years before, but I never remember to have received any letter from him before, & was astonished at receiving it, as I did not know that Millner was a patient of his.

Quest. What did you do upon receipt of Boyland's letter?

Ans. I at once telegraphed to Jas. P. Harrison to come by next train to Balto., & received his answer saying he would be here the following morning. I then urged him, after an investigation of the case, to accompany me to Buffalo Lithia Springs the following day, as the tenor of Dr. Boyland's letter led me to suppose that I might require his services as adviser and lawyer.

Quest. Please state succinctly & clearly whether you went to Buffalo Lithia Springs and what there passed between you and Jas. R. Millner in respect to the settlement of February 28, 1873, & the subject-matter of this suit.

86 Ans. On arriving at Buffalo Lithia Springs, at about 10.30 p. m., I stopped at Dr. Boyland's cottage, which was near the

entrance. Dr. Boyland admitted me, & I asked him if he had received a telegram from me which I had sent the previous day. I told him I had come down to see Jas. R. Millner & I hoped he would be able to see me in the morning, as he had solicited an interview with me through him (Dr. Boyland). The following morning when I went in to the breakfast table Mr. Millner was seated near the door. He turned from his seat, offering me his hand, & said, "How do you do, Mr. Hoffman?" After greeting him I said, "I will see you at your cabin after breakfast." I do not think we had met since we closed our business, in 1873. I don't remember ever having seen him since that time, nor do I think I had been any place where he could have seen me. Directly after finishing my breakfast I went to his cabin, where I found him awaiting me. He opened the
87 conversation by saying, "Mr. Hoffman, I have wanted to see you for a long time. I am a very ill man, & I hope you will be patient & let me tell what I have to say in my own way." He commenced by going back many years & saying he thought he had the illness, of which he could not be cured, from boyhood. He related his visits to Dr. Miles, in Balto., & to a doctor in Philadelphia, & the latter told him that he had Bright's disease & was incurable, which made him think a great deal of his future. He said that he had been very much disappointed at the conduct of his brother, John P. Millner, in whom he had lost all faith as an honest & a good man; that after a fall that he had received at his factory, which had entailed a very serious illness, he had sent to Danville for Mr. Peatross, his lawyer, & had his will made, making his brother John co-executor with his wife; that John said he could not give bond & he allowed him to go on without that requirement, & that he only blamed Mr. Peatross for allowing him
88 to do that when he was so ill that he was not aware of the consequences; that later he became convinced that John was unworthy, & he told his wife "that he would send for the will & she could burn it up, as it would be better to pay Hoffman, Lee & Co. the debt he owed them than that John should have control of the property, as he would manage to take it all & she & the children would get nothing." He said he sent for the will & gave it to his wife & she did burn it up. He said he either had made or intended to make another will, in which the executor would not be a relative & nobody would know who it was. I asked him if his wife knew that he took from us this money. He said she did, but that *that* she had had nothing to do with it & did not intend to be left without any support. He also said at another time that she said to him, "If you can't make your peace with God, take some money & settle the matter with Hoffman, Lee & Co."

89 Later in the interview he said, "Mr. Hoffman, you don't know all I have to contend with. Sallie (meaning his wife) says if I take too much of the money to pay you (H., L. & Co.) with that she will leave me & take all the children with her." At this point of the conversation he showed a great deal of emotion & his eyes filled with tears.

I allowed him to talk of his home matters with as little interruption

as possible, as he always requested me when I stopped him to "hear him out." Knowing that I had to leave there that night, I said, "Mr. Millner, you must come to the practical point of our interview, which you have requested. You say you took money from us. State what was the amount." He replied, "I took $5,000.00 in gold & afterwards $7,000.00 in greenbacks, making $12,000.00, & I have not had one happy day since." I said, "Did you have that amount at Patton's the day you made your compromise with us?" He replied,
90 "No; I had put it away." I said, "How could you have reconciled it to your mind to take such an amount from us?" He said, "I first took the five thousand dollars ($5,000.00), thinking that I ought to have had that much profit from my tobacco, & I afterwards took the $7,000.00 from the same motive. I thought that you were afraid of my going into bankruptcy, as I told you I would do if you forced me, and as you had doubled your account above what was due you in order to get your full debt; that I was told that I ought to bring your books into court." For the first time I lost my temper & said, "Very well, we will bring suit, & you can then see our books." He made a strong appeal & begged me not to, as he said he *said he* was now convinced that we were & had been honest; in view of which appeal I consented to continue the interview. I then asked him, "What did you do with this $12,000.00?"
91 He said, "I had agreed, in case I made the settlement with you, to give it to John & Joe Millner to work on joint account at their factory, they doing the work." I said, "Did Joe know that at the time we settled the question, in February, 1873, & when he was with us?" He replied, "He did."

I then said, "You have written me, through Mr. Peatross, that you could make no other restitution than to confess your wrong & to ask pardon. What means have you now?" He said, "The Bob Hodnot place, for which I was offered $1,800.00, but refused—I don't think I could get more than $1,500.00 for it now. Then I own the Brick place, which is worth $1,500.00; then one place sold for $1,500.00 on time, but no payment yet made." I said, "That makes $4,800.00, to start with." He quickly corrected me & said, "No; I told you the Bob Hodnott place was only worth now $1,500.00; it makes $4,500.00." I then said, "Millner, I had better take this down in writing; wait till I get a pencil & piece of paper & put it
92 down"—which I did, as shown by the original memorandum written on my knee at the time & filed, marked Exhibit Sullivan No. 8. He said the "Home place" had cost him "$25,000.00 as it stands," but that he did not believe that it would bring more than $12,000.00. The Danville house & lot he thought to be worth $5,000.00, as he had withdrawn it under an offer of $4,500.00. His balance, when his tobaccos with Pleasants were sold, would show about $10,000.00. It would not vary much one way or the other from that figure. This made $31,500.00, which he thought he was worth, but that his debts would amount, including his current expenses for the year & a debt he owed Payne (his brother-in-law) for working for him & a bill to Mr. Peatross for professional serv-

ices & other small items, to $3,500.00, which would cover, he was certain, every cent he owed in the world.

In the memo. filed as Exhibit # 8 I called attention to
93 the 15 on the line of the $1,800.00 as a *corrected* made in consonance of Millner's statement of $1,800.00 being an overvaluation.

After the exposition of his present means I said, "Mr. Millner, how could you write me a letter, through Mr. Peatross, stating that you could not make pecuniary restitution? Did you not know that the $12,000.00 you took from us more than 12 years ago was the foundation of what you now own; that you have lived upon it all that time & brought up a large family?" I further said, "Did Mr. Peatross know that you had such means when he wrote that letter to us?" He said he (Peatross) knew all about his affairs, had drawn his will, & that when he went to him with a view of making restitution & confessing to us that he had *taking* the money from us that he said all an honest man could do was to confess that he had done wrong & ask forgiveness. He said, "I have read
94 some sermons of Mr. Moody on 'restitution' & know that I ought to pay back, without which I cannot make my peace with God nor join the church."

I then said, "Mr. Millner, what do you propose to do towards replacing the money you have taken from us?" He replied, "If I had not lost so much money last year I would have paid you before now. I hoped, if you came down to see me, that you would give me time & let me work it out." I replied, "That is impossible. In your condition of health we could never expect that you could do so." He then said, Could you not, while I am drinking the waters here, work at Clarksville? I soon showed him the impracticability of this in his present condition. I then said, "Remember, you owe us over $23,000.00, including interest, as your property realized to us less than $6,000.00." He said, "I can't go into all those figures; am not well enough. I thought with interest it might be somewhere near $20,000.00, but you must remember that when
95 we made our settlement, in 1873, you offered to take the Axton property at a valuation of $8,000.00." I said, "That may be so, but I do not recollect it." He said, "I do distinctly." His memory on some of these points was better than mine, & I was amazed at it.

I told him I must go away that evening, & if he wanted to make any settlement he must speak to the point & say what he wished to do. He said, "When I was talking to John about this matter of taking your money from you John said to me, 'If you go on talking this way Hoffman, Lee & Co. will hear of it & will sue you for the money.' I replied to him, 'John, I am going to confess the whole thing to Hoffman, Lee & Co., for they ought to know it, & I won't be happy until they do. Do you think they will take the Home place & release me?' John said, 'If you are fool enough to do it of course they will, but that matter is settled & you don't owe them anything.'"

96 He (Jas. R. Millner) offered to give us the "Home place" if we would release all claims. I told him I did not want country property, & finally, after much discussion, I promised to take $7,800.00 in cash as a compromise settlement. He said that all his cash was in Pleasants' concern & he wanted to have some cash to begin business with again if he got better. He finally offered the Danville house & lot at a valuation of $6,000.00 & enough cash to make up $7,700.00 as a compromise settlement, I consented to accept the Danville lot at a valuation of $5,500.00 & $2,200.00 in cash. I, however, told him that I could consent to make no settlement with him personally without the consent of his family & his legal advisers, but that that must be consummated promptly, as otherwise I would have to enter suit for the protection of my firm. I had mentioned in the course of my interview that Mr. Jas. P. Harrison, my legal adviser, had come down to Buffalo Springs
97 with me. In the afternoon he asked me where he could see Mr. Harrison, as he wished him to take a message to Mr. Peatross to come down to see him at once. I said, "I will find out." He followed me out & found Mr. Harrison playing croquet with the ladies, as he said it was his afternoon hour for drinking the water. He called Mr. Harrison from the croquet grounds & asked him to walk with him to spring No. 2. I accompanied the two. He made known to Mr. Harrison his strong desire that he should see Mr. Peatross immediately upon his arrival in Danville the following morning & to get him to come down at once to see him. He told Mr. Harrison, in my presence, that he had taken the $12,000.00 from us. I then left him & went to my cabin to pack up. In the course of half an hour he (Jas. R. Millner) called at my cabin & asked me to give him a final interview. He there reiterated much what
98 I have stated hereinbefore in urging a quick settlement for the peace of his mind; said that his brother John was entirely untrustworthy; had tried to induce him to advance him money to work tobacco, although he knew that he had been told that he (John) was in debt. After I had got into the carriage to start for Scottsburg he sent for Mr. Harrison to have another interview. The facts I have detailed are not in regular order, as the interview lasted from eight o'clock in the morning until six o'clock in the evening with an intermission of 30 minutes for dinner.

Foregoing answer objected to on behalf of Joseph T. & John P. Millner as hearsay & in no manner binding upon them, & so far as it seeks to give the admissions or confessions of Jas. R. Millner it is objected to upon the ground that at the time of the conversation which took place the said Jas. R. Millner was an insane man.

99 Quest. At that time did J. R. Millner, either by his manner or his conversation, impress you as being insane or with any less vigorous mind than in your previous acquaintance with him twelve years before?

Ans. He was entirely consecutive & clear in everything he said, only giving evidence of the usual feebleness of a man who was a positive invalid as far as bodily health was concerned.

The foregoing question & answer objected to as leading by counsel.

Quest. Were the statements made by Mr. Jas. R. Millner in this interview in accordance with the correspondence & other papers in your office or diverse therefrom?

Ans. They were fully characteristic of the diffusive & voluble way in which he treated all subjects bearing upon himself or his own interests since I have known him or been in correspondence with him.

Quest. Did he himself in the interview state anything to you as to the purpose or threat of any of his friends or relatives to
100 have him declared insane? If so, what, & what, reason was alleged therefor?

Answer. He constantly referred to efforts made by his brother John to have him placed in an insane asylum; that John had offered to go with him to an asylum, but when he asked him to go to Buffalo Lithia & stay with him, & where he might get well, John refused; that he was satisfied that John wanted to get him out of the way so as to get control of his affairs; that he had prejudiced all the people in the county against him, saying that he was insane, so that he could hardly get any one to do any work for him; that John had exercised more of this kind of tyranny & effort ever since he had learned that he had burned the will in which he was mentioned as executor.

Quest. Since your return to Baltimore have you found any letter or letters from Millner Bros. to corroborate the statements of Jas. R. Millner made in that interview, that he put the $12,000.00
101 which he had taken from you into the hands of Millner Bros., to be used by them in their business of manufacturing tobacco for the year 1873? If yea, produce the same.

Ans. On reviewing the correspondence since the revival of the matter I was struck with the fact that in a letter from Millner Bros. of July, 1873, that they speak of expecting to receive in a few days $12,000.00 in cash, which would render them independent of their usual financial wants. Their hitherto needy condition naturally arrested my attention after hearing Jas. R. Millner's confessions.

Said letter is herewith filed, marked Exhibit Sullivan # 9.

Adjournment.

I adjourn the further taking of testimony until to-morrow, Wednesday, 2nd Sept., at 10 o'clock a. m.

WEDNESDAY, *2nd September*, 1885.

Pursuant to adjournment, commission met at time & place, same persons present, & proceeded to take testimony.

FELIX R. SULLIVAN,
Notary Public.

102 WEDNESDAY, *2nd September.*

In conformity with above adjournment, commission met

at 10 o'clock a. m. at same place, & same parties present, & proceeded to take testimony.

FELIX R. SULLIVAN,
Notary Public.

Quest. Since your return from Buffalo have you found, upon examining your letters & books, that the statements made to you by Mr. Jas. R. Millner were in accordance with the facts, & that his recollection was or was not clear & accurate?

Question objected to by counsel, unless the statement & books referred to are produced.

Ans. He remembered that when he settled with us that we settled on a basis of a debt by him to us of over $15,000.00, assumed values at the time of the compromise in 1873, and in wanting to pay us about $7,700.00 he was assuming in his own mind that the value of his property transferred to us was about $8,000.00, without considering any accrued interest or commissions, and that we ought
103 to be satisfied with that settlement of the debt This, I explained to him, was very unjust, as he had the full use of the money he had taken from us for so many years, & we not only did not get any interest but had no opportunity of making money out of it as he had had; and as I was only influenced to entertain the acceptance of the compromise of about $7,800.00, which he offered, by the belief that he, Millner, was honest in his confessions of regret & remorse, and that I was assuming great responsibility on the part of my partner in so doing without conference with him (my partner, Mr. Lee), after being put in possession of the facts he had stated to me & of which he, Mr. Lee, was entirely ignorant.

Quest. How was his recollection of details of transactions in 1873 & prior thereto as compared with your own?

Ans. He seemed to remember all the main facts with singular accuracy, considering the lapse of time.

Quest. Did he state that any one knew in 1873 of his having withheld your money—that is, $12.000.00 of your money?
104 If yea, whom?

Question objected to by counsel upon the grounds that any statement made by Jas. R. Millner is not evidence.

Answer. Calling to mind that Jos. T. Millner had been present at the interview of 28 Feb'y, 1873, & had shown great solicitude for the consummation of the compromise settlement, I asked him if Joe Millner knew that he had reserved $12,000.00 of our money. He said "he did know it."

Answer objected to, so far as it seems to bind Jos. T. Millner by the declarations of Jas. R. Millner, by counsel.

Quest. Did he say that any one else knew of it? If yea, whom?

Same objection to question & answer by counsel as to Quest. & Ans. # 51.

Ans. I am confident that he said his wife knew it, & I am almost positive that he said his brother-in-law, Payne, knew it.

Quest. Did Mr. Harrison see Mr. Millner until Mr. Millner sought him himself?

Ans. I am confident that they did not come together until
105 the afternoon upon the croquet grounds alluded to, as I was with Millner the whole of the previous part of the day.

Quest. After the interview did Mr. J. R. Millner continue by letter or otherwise to seek to secure a settlement with Hoffman, Lee & Co.?

Answer. He did.

Quest. Through whom & in what manner did he make such efforts?

Ans. He got Dr. G. Halstead Boyland to write such an offer through his dictation.

Quest. In pursuance of this purpose on Millner's part, did he advise you that he would employ other counsel & urge upon you to visit him again at Buffalo Lithia Springs?

Ans. He did.

Quest. Were H., L. & Co. willing to carry into effect the settlement offered by Millner in this last interview?

Ans. to. We were willing, & so expressed it, to carry out the compromise settlement on the basis of $5,500.00 for the Danville house & lot & $2,200.00 in cash.

Quest. Why were H., L. & Co. willing to accept about $8,000.00 in full of over $23,000.00 from a man estimated to be worth from $70,000.00 to $75,000.00?

106 Ans. I, the senior partner, reported the offer I had made to Jas. R. Millner to Mr. Lee, my junior partner, on my return from that visit to Buffalo. Mr. Lee, on hearing all the details & confessions of Millner, said: "Of course, I will endorse anything you have done, Mr. Hoffman, but I think we are entitled to all our money." My reason for accepting it for my firm was the evident contrition & remorse of Millner, & until the cause was removed his physical condition might deteriorate rapidly, & Millner's assurance that while it rested upon his conscience he could not improve in health, but feared it would kill him, as the thoughts of it took away his rest & peace of mind.

Quest. Consideration for whose interest & welfare led you to acquiesce in Millner's wish & proposition?

Ans. For Millner alone.

Quest. Why did you delay the institution of suit?

Ans. Solely out of consideration for Millner's sensitiveness
107 about making the matter public, as he said it would leave a stain upon his own name & that of his children.

Quest. Whose action ultimately led you to institute the suit?

Ans. The action of Mr. Peatross, communicated to us through our counsel, Berkeley, Harrison & Green, who informed us that he, Peatross, would attack any action that he, Millner, made on the ground of Millner's insanity. This left only one course open to us for the protection of our interests—to seek redress through the courts.

Cross-examination by Mr. HARRIS:

Without waiving objections heretofore noted to the competency of witness, R. G. Hoffman, the defendant- proceed to cross-examine him as follows:

C. I. # 1. When did Hoffman, Lee & Co. commence business with Jas. R. Millner?

Answer. In 1869; when firm of Hoffman, Lee & Co. was formed.

C. I. # 2. What was the character of the business done between you & Jas. R. Millner?

Ans. We sold man'f'c't'd tob'o for him & shipped by him to us on commission.

108 C. I. # 3. What was the amount due your firm by Jas. R. Millner in Feb'y, 1873?

Ans. Twenty-three thousand three hundred & sixty dollars & sixty-one cents ($23,360.61). That was the amount due 20 Jan'y, 1873.

C. I. # 4. Did your books at that time show that balance?

Ans. They did; but we held some stock of his tobacco on hand, which is exhibited in our statement of 28th Feb'y, 1873, filed in the direct examination & marked Exhibit Sullivan # 1.

C. I. # 5. After the sale of the stocks on hand belonging to Millner what balance was due H., L. & Co.?

Ans. After the sale of that stock the debt of March 4th, 1874, when the tobaccos were closed out, was nineteen thousand two hundred and ninety-five dollars & forty-two cents ($19,295.42).

C. I. # 6. This, then, was the balance due you according to your books at the time that Jas. R. Millner & yourselves ceased to have transactions?

Ans. No, sir; it was not. Under our compromise agreement of 28th Feb'y, 1873, we made an estimated statement, hereinbe-

109 fore filed, assuming values for the tobaccos on hand given in that statement which were not realized. We presumed at that time when we had no reason to suppose that the settlement was not a fair one that the settlement was final; but when we learned in 1885 *that* the action of Jas. R. Millner in holding the monies of our firm, which he confessed to having taken, we employed an expert, Wm. T. Thelin, auditor of the Baltimore & Ohio railroad, to make up Jas. R. Millner's account, with the ordinary commissions & charges thereon & at the actual prices they sold for which we had not charged those particular tobaccos with which were on hand at the time of the compromise settlement, 28th Feb'y, 1873. We did this as we considered that settlement was null & void under Jas. R. Millner's confessions, & that our relations were relegated to the original one of consignor & consignee.

C. I. # 7. Leaving out for the present Mr. Thelin's statement taken from your books of 1873, what did the books of H., L.

110 & Co. of 1873 & 1874 show against Jas. R. Millner—that is, at the time when your transactions together ceased?

Ans. Our transactions with Jas. R. Millner under the idea at the time that the compromise settlement of 28th Feb'y, 1873, was made in good faith & ceased upon that day & our statement of that day

showing a balance of $15,758.69 under the assumed values taken for the stock of tobaccos on hand showed what we believed to be his indebtedness on that day.

C. I. ≠ 8. In reaching this result did you not charge Millner with all monies drawn, credit him with sales made, & take stock on hand at agreed figures?

Ans. We did.

C. I. ≠ 9. Then the above figures show Millner's indebtedness to H., L. & Co. at the time of the compromise settlement of Feb'y, 1873, do they not?

Ans. We accepted that statement as a basis of settlement.

C. I. ≠ 10. Was it the statement of your own house?

Ans. It was.

C. I. ≠ 11. Was it correct?

111 Ans. For the sake of compromise we consented to place those values upon the stock of tobacco on hand, which proved far in excess of what was realized from them; the balance of the statement were exact figures from our books.

C. I. ≠ 12. What was the actual indebtedness of Jas. R. Millner to you at that time?

Ans. I have given the answer above as accurately as it is possible to be given.

C. I. ≠ 13. You say "for the sake of compromise" you settled upon the basis of $15,758.67. What was the actual indebtedness at that time?

Ans. The actual indebtedness on 20 Jan'ry, 1873, was $23,360.61—with 39 days' int. at six per cent., amounting to $151.85, makes the indebtedness on 28 Feb'y, 1873, $23,512.46.

C. I. ≠ 14. Did your books in Feb'y, 1873, show this balance, or is this the balance brought down by Mr. Thelin since the institution of this suit?

Ans. Our books showed that amount.

C. I. ≠ 15. If that is so, how is it that Thelin's account, made up as you have stated after the confessions of Jas. R. Millner

112 upon a different basis, tallies with this?

Ans. Mr. Thelin simply took the actual figures upon our books, & does not vary in any particular from this statement.

C. I. ≠ 16. Is his statement a copy of your books?

Ans. His statement is taken from our books, the only difference being that when we learned that Mr. Millner had confessed this wrong to us we employed him as an expert to make up from our books a statement of the account with the ordinary charges of commissions, &c., which they would have borne had no compromise settlement been made, as we considered our agreement not to charge commissions in taking those tobaccos in the compromise settlement of 28 Feb'y, 1873, was cancelled by the subsequent confession of Jas. R. Millner.

C. I. ≠ 17. Why is it that if in 1873 your books show that the balance due you by Millner was $23,512.46 that you recite in

113 your deed of 15 March, 1873, exhibited with your bill, that upon a settlement of accounts Millner was found to be justly indebted to H., L. & Co. in the sum of $15,758.67?

Ans. That is accounted for in the statement by the values which we placed upon the stock of tobaccos we had unsold. The only way of giving him credit for the value of these tobaccos was by assuming some value for them, & that value was given in this statement, which was the basis of the compromise. The assumed value of those tobaccos was $7,753.79, by crediting him with which & deducting it from the above $23,512.46 leaves the balance $15,758.67.

C. I. # 18. What did the tobaccos estimated as above $7,753.79 in the compromise settlement actually yield?

Ans. They actually yielded $4,878.28, without interest from dates of sales up to the 4th March, 1874. The statement of Mr. Thelin will show the details as to interest.

C. I. # 19. Who negotiated the compromise settlement of Feb'y, 1873?

114 Ans. Robert G. Hoffman with Jas. R. Millner, who had his brother, Joseph T. Millner, as his adviser, with him the greater part of the interview.

C. I. # 20. Where & when was that interview held?

Ans. I think it was held at the Paxton House, Danville, on 28 Feb'y, 1873, & the writing was consummated at Robertson & Green's office, in Danville.

C. I. # 21. Was any one present save the parties you have named?

Ans. Not to my recollection.

C. I. # 22 Did Millner at this time say anything of availing himself of the bankrupt law? If so, what?

Ans. I have an indistinct recollection of his either writing to us or speaking to us about his taking advantage of such law.

C. I. # 23. Was not this threat upon his part of availing himself of the bankrupt law the inducement to you to make the compromise of Feb'y, 1873?

Ans. I think not, as the surrender of his property as agreed, from the values he, Millner, said we placed upon it at that time,

115 would have made little difference, as he would have to have paid fifty per cent. of his debt to have gotten his discharge in bankruptcy.

C. I. # 24. Can you state that this did not influence you?

Ans. I do not remember that it had any bearing on the case.

C. I. # 25. Have not Hoffman, Lee & Co. had considerable business with the manufacturers of tobacco in Pittsylvania Co. since the compromise with Millner?

Ans. We have.

C. Q. # 26. Have you not often visited the county upon business since then?

A. Occasionally—probably once a year.

C. Q. # 27. Did you not know, long befor- the institution of this suit, that Jas. R. Millner was a manufacturer of tob. in said county & a man of property?

Ans. I knew that he was a manufacturer, & heard rumors that he had been doing well, but treated them simply as rumors.

C. Q. # 28. When you went to Buffalo Springs to see Millner whom did you first meet after getting there?

116 Ans. The manager of the springs. Mr. Moore, I think, was his name. He was the first person I saw and talked to.

C. Q. 29. Did you see Dr. Boyland before you saw Jas. R. Millner?

Ans. I did.

C. Q. 30. Did you have any conversation with him touching Millner's condition?

Ans. I did.

C. Q. 31. What was said?

Ans. I asked Dr. Boyland if Millner was in all respects well enough to conduct a business interview. He said "he was in every respect;" that he had Bright's disease of the "kidneys." I asked him if Millner was in immediate danger of dying, and he said "he thought not; it was possible he might live a couple of years, but it was impossible to say how long he might live, but that his mind was troubled about something, & that at his (Millner's) instance he (Boyland) had written me to come down to see him." I asked him if he had received a telegram from us the day before asking if Millner was well enough to see me, & he said, "Yes." I asked
117 him why he had not answered it. He replied that he thought it might be of more importance to Millner than to me, & that he did not want to give me such a long journey & thought it better to write, which he had done the day the telegram was received, and he had also written a letter at Millner's dictation, both of which letters are filed with the bill. He said that Millner was present when he received the telegram, &, hearing him say he had rec'd a telegram from me, suggested his writing the above letters, & also insisted upon paying for the telegram, which was $2.00, as it was sent upon his business. I then told Dr. Boyland that it did concern me greatly, as it was about a large debt he owed my firm many years ago. He then reiterated that he, Millner, was quite competent to conduct any interview that I might have with him clearly and intelligently.

C. Q. 32. Did you have any letter from any one else except from Dr. Boyland inviting you to Buffalo Springs to see Millner?

118 Ans. I do not think any other letter were received except those written by Dr. Boyland.

C. Q. 33. Will you please file all of such letters?

Ans. Yes; I will file them & mark them Exhibit Sullivan No. 10. The others are already filed with the bill.

C. Q. 34. Are these all the letters received by you touching this matter?

Ans. All that I know of, except one letter from Dr. Boyland, marked Sullivan No. 11.

C. Q. 35. What relation or connection exists between yourself & Dr. Boyland?

Ans. Dr. Boyland married my first cousin. I also file a letter from Dr. Boyland bearing on this case & marked Exhibit Sullivan No. 12.

C. Q. 36. Who was present at your interview with Jas. R. Millner at Buffalo Springs, as detailed in your examination-in-chief?

Ans. No one except those persons I have referred to when Mr. Harrison was present, towards the latter part of the day.

C. Q. 37. Why did you take counsel with you to Buffalo Springs?

119 Ans. As Mr. Harrison had come on from Danville to see me the day before I went to Buffalo Springs, the books, letters, &c., being in Baltimore, I did not know what might be the developments & thought it might be advisable to have a legal adviser within reach. I therefore urged him, as it would not be much out of his way on returning home, to go down to Buffalo with me.

C. Q. 38. Did Millner have friends or counsel present at that time?

Ans. Millner had been at the springs for two years; seemed to be on very intimate terms with Mr. Goode & the gentleman in the office; otherwise I had no means of judging, as we were together pretty much all the time I was there.

C. Q. 39. Was Col. Goode present at that interview or was he or any one else asked to be present at that interview?

Ans. On the contrary, it was Millner's distinct request that the interview should be strictly private.

C. Q. 40. How long did the interview last?

Ans. Almost continuously during the day.

120 C. Q. 41. Was not this interview had upon Millner's part under the impression that the matter was to be compromised & adjusted between you?

(Objected to, since it was impossible for Mr. Hoffman to know the impression on Millner's mind.)

Ans. I had no means of ascertaining the fact.

C. Q. 42. Did you not lead him to believe that the matter was to be amicably settled between you two without suit?

Ans. I told him that nothing would be done without the confirmation of Mr. Peatross, in whom he seemed to have confidence, and of his family, as he had led me to believe that they would resist the payment of any considerable sum to us. This led him to ask if he could not get Mr. Harrison to take the message referred to in the direct examination to Mr. Peatross & bring about an early interview, and told him that any material delay in bringing suit might be prejudicial to our interest.

C. Q. 43. At the time you visited Millner at Buffalo Springs did you purpose instituting this suit against him?

121 Ans. I intended to be guided by circumstances, as I was in the dark as to what Mr. Millner might confess to us in the coming interview, which he had solicited with me.

C. Q. 44. Was Millner advised of the determination & purpose on your part before he made this statement to you?

Ans. Nothing at all was said about it one way or the other.

C. Q. 45. Was any advice given him by yourself or Mr. Harrison, your counsel, as to what he ought to do in this matter?

Ans. I can only speak for myself. I told Mr. Millner, after the transactions detailed in the direct examination, that a suit was the

only alternative if a compromise was not made, & that as much as I would regret to injure his health I would be forced to enter suit, & if I did would do so in no bitterness to him personally, as I thought he had paid bitterly for what he had done, & I believed his expressions of remorse & sorrow.

C. Q. 46. Do you know whether at that time Mr. Harrison had any interview with Millner; &, if so, what the purport was?

122 Ans. Mr. Harrison had the interview refer-ed to in the direct examination in the walk from the croquet grounds to Spring No. 2 & back again, in which Mr. Millner told him, Mr. Harrison, that he, Millner, had taken $12.000.00 from Hoffman, Lee & Co. I then left to pack up, when he continued his conversation with Mr. Harrison, in which he substantially repeated, as Mr. Harrison afterwards told me, the principal facts revealed to me during the day.

C. Q. 47 In the conversation between Jas. R. Miller & Mr. Harrison did Mr. Harrison counsel or advise Mr. Millner in the premises?

Ans. Certainly not in my presence & and not to my knowledge afterwards. It was distinctly understood between Mr. Harrison & myself that Mr. Harrison should keep entirely away and not have any conversation with Millner during our entire interview, & when I went to make arrangements for a carriage to go to Scottsburg — took occasion to see Harrison & make arrangements

123 for him to meet me & to get into the buggy at once upon the hour appointed for us to start. Unless Mr. Millner had insisted upon seeing Mr. Harrison they would not have met upon this visit.

C. Q. 48. What was the market value for Millner's Extra Golden Twist for the years 1873 & 1874?

Ans. The market value will be shown with the account sales filed with the bill, varying very much according to demand & condition of tobo-. The sale of the 365 boxes Golden Twist sold at various dates from Oct. 4, 1873, to Jan'y 5, 1874, shows sales at from 60c. to 55c., tax paid. These are the tob-os we received in payment of the "Axton" property.

C. Q. 49. Were these prices the market value of said tob-os at thoes dates?

Ans. If self-interest is any evidence that they were full market value, we sold them for our *our* own account, as they we- the 16,000 lbs. that we had taken in payment for the "Axton" property, & it was our interest to get the utmost out of them that we could.

Redirect examination by Mr. HARRISON:

124 R. D. Ques. 1. Did you do business with J. R. Millner prior to the formation of the firm of Hoffman, Lee & Co.?

Ans. We did.

R. D. Ques. 2. Did Dr. Boyland know, until you told him, the object of Jas. R. Millner's urgent desire to see you?

Ans. He told me that he did not know the object.

R. D. Ques. 3. What condition did Mr. Harrison require before he would agree to accompany you to Buffalo?

Ans. That he should avoid any interview with Jas. R. Millner.

R. D. Ques. 4. Was it Mr. Harrison's wish to confer with Mr. Millner or was such conference held only upon Millner's request?

Ans. Millner insisted upon seeing Mr. Harrison & hunted him up himself, and I went with him.

R. D. Ques. 5. What reason did Millner give for wishing to see Mr. Harrison?

Ans. He said if he could see Mr. Harrison he could get him to explain to Mr. Peatross his (Millner's) reason for wanting to see him, which would cause an early visit from Mr. Peatross.

125 And further this deponent saith not.

ROBERT G. HOFFMAN.

The introduction of the following witness — objected to upon the grounds that Jas. R. Millner, one of the parties to this suit, was insane, etc.

CHARLES O'DONNELL LEE, a witness of lawful age, being produced and sworn, deposes and says as follows:

Quest. 1. Stat- your name, age, residence, and occupation.

Ans. Charles O'Donnell Lee; residence, Baltimore Co.; age, 44 years; occupation, member of the firm of Hoffman, Lee & Co.

Quest. 2. Why did Hoffman, Lee & Co. accept a deed to Millner's property in full of their debt in 1873?

Ans. Because we had perfect confidence in the man & we believed it was all he had.

Quest. 3. What amount at the time of the settlement was due H., L. & Co. by Jas. R. Millner, irrespective of stock on hand?

Ans. $23,512.46, which is the amount of debt shown by our
126 books—say, $23,360.61, with the addition of 39 days' interest at six per cent.—say, $151.85, making the amount as stated above.

Quest. 4. After crediting him by estimated value of stock of tobacco on hand, what balance was due 27 Feb'y, 1873?

Ans. $15,758.67, as shown by Exhibit Hoffman No. 2, filed with the bill.

Quest. 5. In whose handwriting is the principal part of that deed marked Exhibit Hoffman No. 2?

Ans. To the best of my knowledge and belief, it is in Capt. Robertson's handwriting.

Quest. 6. By whom were the figures on the second line from the bottom of the — page thereof, to wit, $15,758 — & filled in to said deed?

Ans. After careful comparison with the figures in Jas. R. Millner's numerous letters I have no hesitation in stating that the figures of the amount were filled in by Jas. R. Millner.

Quest. 7. Please compare exhibit with the bill, Hoffman No. 5, with Exhibit Sullivan No. 1 and explain the large discrepancy in

the amount therein respectively shown to be due by Jas. R. Millner.

127 Ans. The amount of $15,758.67, shown by Sullivan No. 1, was arrived at by crediting Millner with tobacco on hand at a price satisfactory to him for the sake of compromise, but which was higher than the goods averaged and sold. Now, the discrepancy or difference in the amount of $19,295.42 is due to the fact that on the receipt of Peatross' letter detailing Jas. R. Millner's *behalf his* (*Millner's*) dishonesty towards us in the compromise settlement of 1873 the account assumed its original position—that is, in being subject to all the legitimate charges & interest—and was so made up by Mr. Thelin from our books.

Quest. 8. Upon what terms, as to the use and application of the same, were the advances of money by your firm made to Jas. R. Millner?

Ans. The advances were made for the sole & express purpose of purchasing leaf tobacco, which was to be manufactured & shipped to us to be sold on commission, after the payment of which & the legitimate charges he was to be credited with the proceeds, if

128 there were any, & to be debited if there were any shortage, to secure which he gave us a deed of trust on his property.

Quest. 9. If H., L. & Co. had known, on 28th Feb'y, 1873, that Millner had failed to use $12,000.00 of such advances in the purchase and manufacture of leaf, but had the same in cash, would they have settled, as they did settle, at the said date with the said Jas. R. Millner?

Ans. They would not. He was most positive in assuring us that he had given up everything.

Quest. 10. Did he or not represent to you at the time that he had complied with his contracts with you?

Ans. He did, and we believed him.

Quest. 11. In that faith how did you regard the balance left due by Millner, after crediting his debt by the 16,000 lbs. of tobacco tak*ing* of Millner Bros. in payment for the property surrendered?

Ans. I considered the balance as lost to us. We thought at the time that Millner Bros. were doing a very praiseworthy action in assisting their brother.

129 Quest. 12. Did Millner Bros. evince any special interest and desire in securing said settlement?

Ans. They did, and through Joseph T. Millner they made every effort to complete the compromise.

Quest. 13. Did you then or shortly thereafter suspect any bad faith or collusion on the part of Jas. R. Millner or Millner Bros.?

Ans. They had been doing business with us for a number of years, and we considered that they treated us honestly.

Quest. 14. When for the first time were you led to suspect that you had been treated dishonestly in such settlement?

Ans. Not until the middle of May, 1885, when we were made aware of the fact by Mr. Peatross' letter.

In consequence of the lateness of the hour, I herewith adjourn

the further taking of the testimony until to-morrow, Thursday, 3rd September, at 10 o'clock a. m.

FELIX R. SULLIVAN,
Notary Public.

THURSDAY, *September 3rd*, 1885.

130 Pursuant to adjournment noted above, comm'rs met at 10 o'clock a. m., at the same place, and proceeded to take testimony, the same persons being present.

FELIX R. SULLIVAN,
Notary Public.

CHARLES O'DONNELL LEE, being further questioned, deposes & says as follows:

Quest. 15. Since such disclosure has re-examination of the letters & papers of Millner Bros. & Jas. R. Millner, in the light of recent disclosures, revealed anything to confirm the truth of thoes disclosurers? If so, please produce such papers and designate what parts of the same are so confirmatory.

Ans. Since the confession of Jas. R. Millner I was very much amazed, in looking over our letter files, to find a letter from Millner Bros., under date of 15th July, 1873, filed herewith and marked Exhibit Sullivan No. 9. In this letter they say: "We are glad to inform you that $12,000.00 more will put us squarely with the world. The next ten days will give us that amount." Millner's confession that he gave his brothers that same amount con-

131 vinces me that the $12,000.00 they state they were about to receive is the same money that he confessed to have taken from us, particularly as the 16,000 lbs. they sent us in payment for the Axton property was manufactured about the same time, which property was conveyed to us by Millner Bros. and afterwards conveyed by them (M. Bros.) to Jas. R. Millner, as shown by exhibits with bill, and their letter from Millner Bros., dated 24th July, 1873, filed as Exhibit Sullivan # 4, in referring to Jas. R. Millner, reads: "We have advised him to turn it over to you. While he seems to be perfectly willing to do so, he will not do so until you write to him that you desire his business, and that you will never attempt to make any more out of him upon the old score, and that you are perfectly satisfied with the settlement you made with him." This convinces me now that at that time they feared we might suspect some wrong, but our confidence in them all was so great that no such thing ever occurred to us.

132 Counsel of Jas. R. Millner objects to the letters of Millner Bros. as evidence against him, and further objects to the foregoing argument of Mr. Lee as evidence in the cause, thinking that the court is to decide this matter upon the evidence produced.

Objection upon the arguments of parties.

Ques. 16. At that time who were advancing monies to Millner Bros. to carry on their manufacturing?

Ans. Hoffman, Lee & Co.

Ques. 17. Up to the date that they said they were to receive $12,000.00 in cash, what had been the pecuniary condition and credit of Millner Bros. in reference to means sufficient to carry on this business?

Ans. Very generally cramped.

Ques. 18. At the time of receiving the letter above referred to, did they or not cause you — suspect any bad faith in the settlement of 28th Feb'y, 1873?

Ans. They did not.

Ques. 19. Why did you select Wm. T. Thelin to make up the exhibit marked Hoffman No. 5?

133 Ans. As being a perfectly honorable gentleman entirely above suspicion, and in addition a thorough accountant.

Cross-examination by Mr. HARRIS:

C. Q. Were you present at the interview between Mr. Hoffman & Mr. Millner at Buffalo Springs touching this matter?

Ans. I was not.

C. Q. 2. Then, what you know of this conversation & the settlement then made is from what Mr. Hoffman related to you?

Ans. Yes.

C. Q. 3. When did you last see or have an interview with Jas. R. Millner?

Ans. I accident-ly saw Mr. Millner two years ago, when he came into our office to borrow a water-closet key. I said, "How d'ye do, Mr. Millner?" and he replied, "Why, you don't remember me, Mr. Lee." I had not then seen him for ten years previous to that.

C. Q. 4. Do you know anything of alleged recent confessions, save and except what has been told you?

Ans. Nothing except what has been told me and what was conveyed to me by Mr. Peatross' letter.

134 C. Q. 5. What was the market value of Extra Golden Twist of Millner in 1873 & 1874?

Ans. The best guide to that fact is our account sales, filed as Hoffman = 8.

C. Q. 6. Statement shows the prices at which this tobacco was sold. State what was the market value of that "brand" at that time.

Ans. As we considered that we were selling the 16,000 lbs. for our own account, we used the strongest motives for getting full market values, which the account sales show, and these were the market values at that time.

And further this deponent saith not.

(Signed) C. O'DONNELL LEE.

Witness objected — on same ground as heretofore stated.

Thelin.

WM. T. THELIN, a witness of lawful age, being produced and sworn, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. Wm. T. Thelin; age, 49 years; residence, Balto. Co.; occupation, general auditor Balto. & Ohio Railroad Co.

135 Ques. 2. Please state whether or not you read the statement filed with the bill & marked Exhibit Hoffman No. 5, from what books, & whether or not the same is true & correct according to the books aforesaid.

Ans. The statement was prepared by me at the request of Mr. R. G. Hoffman & Mr. C. O'Donnell Lee, of the firm of Hoffman, Lee & Co., and was taken from date shown on the books and papers of said firm of Hoffman, Lee & Co.

Ques. 3. Did said books appear to have been kept in regular course of their business?

Ans. Yes, sir.

Ques. 4. Were you ever the book-keeper of Hoffman, Lee & Co.; &, if yea, up to what date?

Ans. For two years, up to October, 1872, and I left them to enter the service of Baltimore & Ohio R. R. Co.

Quest. 5. Please examine page # 511 of H., L. & Co. ledger and designate thereon the date of the last entry by you in said ledger.

Ans. The account is open in my handwriting and the last entries *are* made by me are in September, 1872.

Quest. 6. Who was your successor?

136 Ans. William R. Hoff.

Cross-examination by Mr. HARRIS:

C. Ques. 1. Do you know anything of the transactions of Hoffman, Lee & Co. with Jas. R. Millner and Millner Bros., other than what is taken from the books of H., L. & Co.

Ans. I do not.

And further this deponent saith not.

(Signed) W. T. THELIN.

CHARLES LEE MITCHELL, a witness of lawful age, being produced and sworn, deposes and says as follows:

(Introduction of this witness objected to by defendants' counsel on same grounds as hereinbefore stated.)

Quest. 1. State your name, age, residence, and occupation.

Ans. Charles Lee Mitchell; age, 24 years; occupation, book-keeper; residence, Baltimore city, Md.

Ques. 2. Did you make out the statements marked Exhibit Hoffman No. 6, No. 7, & No. 8. If yea, please state whether they are true transcripts from the books of H., L. & Co., kept in due course of business.

Ans. I made them out and they are true transcripts from the books of H., L. & Co., kept in the due course of their business.

137 Ques. 3. How long have — been with H., L. Co. in the above capacity?

Ans. As clerk I began to keep the books in 1881, and I have been with H., L. & Co. since 1879 or 1880—about 5 years.

Cross-examination by Mr. HARRIS, without waiving the objection as heretofore noted:

C. Ques. 1. Did you keep the book of H., L. & Co. from which the exhibits herein filed are transcripts?
Ans. I did not.
C. Ques. 2. Do you know that the same are correct?
Ans. I do not.

Redirect examination by Mr. HARRISON:

R. D. Q. 1. Were the books from which said transcripts were taken under your charge as book-keeper and the books which had been kept in due course of business by previous book-keepers of Hoffman, Lee & Co.?
Ans. They were.

Recross-examination by Mr. HARRIS:

R. C. Ques. 1. How do you know they were kept in due process of business?
Ans. The books were correct at the time that I received them, but I have no positive knowledge of the correctness of the books that were kept before that.
138 R. C. Ques. 2. Were these books kept by other clerks than yourself & entries therein made prior to the time that you became book-keeper for Hoffman, Lee & Co.?
Ans. They were.

Re-redirect examination by Mr. HARRISON:

R. R. D. Q. 1. Were these books from which these transcripts were taken turned over to you along with the other papers of H., L. & Co. as the books of the concern kept in due course of business by previous book-keepers?
Ans. They were.
R. R. D. Q. 2. How have you found from your experience with such books that the previous book-keepers had kept the same?
Ans. I found that they had kept them correctly.

R. R. C. Q. by defendants' counsel, Mr. HARRIS:

R. R. C. Q. 1. Do you know of your own personal knowledge that the books of which the exhibits filed are transcripts correctly show the transactions between H., L. & Co. & Jas. R. Millner?
Ans. I do not.

And further this deponent saith not.

CHAS. LEE MITCHELL.

139 The witness, Gen. Henry S. Taylor, whose name was omitted from the list of witnesses in the notice of these depositions by an oversight of plaintiffs' counsel, is now introduced with consent of defendants' counsel as far as the objection goes on account of the omission of said name from notice & no further.

Defendants' counsel objects to the introduction of said witness on the ground that Jas. R. Millner, one of the defendants in this suit, was at & before the institution of this suit & now is an insane man.

To this objection plaintiffs' counsel replies that, so far as they are advised, Jas. R. Millner is sane now and has been sane heretofore; therefore they proceed to examine the witness.

Int. 1. State your name, age, residence, and occupation.

Ans. Henry S. Taylor; age, 61 years; occupation, president of the Maryland Hospital for the Insane, a State institution, and also president of the Baltimore Fire Insurance Co.

Int. 2. Have you been to Buffalo Lithia Springs lately. If yea, state when and how long you were there.

140 Ans. I was there the end of June. I think I was there nine days.

Ques. 3. For what purpose and at whose instance did you go there?

Ans. I went there for medical uses of the waters in troubles with the bladder, and was recommended to do so by Dr. Wm. T. Howard.

Quest. 4. Did you meet Jas. R. Millner while there; if yea, when first did you meet him and how much did you see of him during your visit?

Ans. I met a Mr. Millner. I presume it was Mr. Jas. R. Millner, as he was the only person of that name there. I saw him the day after I arrived. I think I talked to him daily while I was there & often two or three times a day.

Quest. 5. Did he know that you were from Baltimore?

Ans. He did.

Quest. 6. Had you heard prior to that visit that there was any connection of interest between himself and the plaintiffs in this cause?

Ans. I had not; I had never heard of Mr. Millner and did not know he had any connection with the plaintiffs.

141 Quest. 7. Who first introduced the subject of there being acquainted & interested?

Ans. Dr. Boyland told me that Mr. Hoffman had been down there a few days before to see Mr. Millner on a matter of business.

Quest. 8. Did you mention that business to Millner?

Ans. I did not until he mentioned it to me.

Quest. 9. State what Millner said to you in regard thereto.

(Question objected to by defendants' counsel as seeking to introduce statements of Jas. R. Millner made when insane & not responsible.)

Ans. The substance, in various conversations, was that Mr. Hoffman had made him two very liberal propositions to settle a debt he owed H., L. & Co., & he begged me the day before I left to see Mr. Hoffman on my return & to say to him that if he would come back there again he would be very glad to settle the whole matter with him on either of the propositions, as his bodily health was becoming worse daily on account of his worrying about this debt of his to

them, H., L. & Co., & he felt sure that if that was once settled
142 he would have some chance of improving bodily.

Quest. 10. You have heard the objection noted by counsel for defendants. Please state whether you had any special interest in insanity, & why, & whether Jas. R. Millner in said conversations with you betrayed any symptoms of insanity, & if yea, to what extent.

Ans. Being president of an insane institution where we have over 400 patients, & which institution I visit once or twice a week & have done so for years, I do take a special interest in insanity & insane patients. I never saw anything in his conversation to indicate insanity & I was surprised when I heard that such a charge was brought against him. After hearing that some of his friends regarded him as insane I paid special attention to his case & still could discern nothing that I thought justified such charges.

Quest. 11. Was Millner under the charge of any person during your stay or did he seem to take care of himself as any other patient at the springs?

Ans. He was under the medical care of Dr. Boyland, who was prescribing for him, but in other respects was as other board-
143 ers, without any one that I saw or heard of having any special interest in him.

Quest. 12. From whom did you hear that people regarded him as insane?

Ans. I think first from Millner himself.

Quest. 13. What, if any, explination of or reason for this on the part of his friends did he give you?

A. It was, he said, to get hold of his property. I think he said that he had offended his brother by destroying a will in which he had made his brother executor. Not expecting to be called upon to testify in this case, I did not specially charge my mind with other details of his conversations.

Int. 14. In these conversations did Millner declare to you the character, amount, or history of the debt he owed H., L. & Co.?

Question objected to by defendants' counsel on the ground heretofore stated.

Ans. He did not mention the amount of the debt he owed, he did not give me any history of same, but did mention the moneyed compromise that Mr. Hoffman offered. There were two propositions, & while I do not remember distinctly the am'ts, think they were about $6,000.

144 Quest. 15. At whoes instance & when did you mention Millner's conversations with you to H., L. & Co.?

Ans. At the instance of Millner himself, & I think either upon the 1st or 2nd day of July.

Quest. 16. For what purpose did you see the plaintiffs in this regard?

Ans. Because Mr. Millner asked me & because in the interest of humanity I wanted to see Mr. Millner's mind relieved of that trouble and annoyance.

Quest. 17. Did Millner state why the liberal propositions of H., L. & Co., through Mr. Hoffman, to him (Millner) were not carried into effect?

(Objected to by defendants' counsel for reasons heretofore stated.)

Ans. I think he said that his own lawyer, influenced by his friends at home, had refused to come to Buffalo Springs to draw the necessary papers to carry the proposition into effect.

Quest. 18. Did he say that H., L. & Co. were willing on their part to do so?

Objected to as above.

Ans. He did.

Quest. 19. When you saw H., L. & Co. for him what was their disposition in this regard?

145 Ans. They seemed willing to carry the proposition into effect, though at a very heavy loss to themselves, as stated by them.

Without waiving objections heretofore taken to witness, defendants' counsel proceed to conduct the cross-examination:

C. I. 1. Had you ever had any acquaintance with Jas. R. Millner prior to your visit to Buffalo Lithia Springs in latter part of June?

Ans. I never saw him or heard of him before.

C. I. 2. You were, then, strangers until this visit?

Ans. Entirely so.

C. I. 3. How do you account for the conversations had with you & statements made by Millner of his private affairs to you?

Ans. I suppose it was because he knew I was from Balto. & that I knew Mr. Hoffman intimately well, & he hoped that through me the settlement might be made & thus relieve his mind of his worrying about it.

C. I. 4. How did he know of your intimate relations with Mr. Hoffman?

146 Ans. He asked me about persons that he knew in Balto. & named 3 that I can recall, viz., Dr. Miles, J. B. Stafford, & Robert G. Hoffman, & I told him that I knew them all well.

C. I. 5. What was Millner's physical condition at this time?

Ans. He looked very badly, walked with difficulty, & told me that he had Bright's disease.

Redirect examination by Mr. HARRISON:

R. D. I. 1. Did Jas. R. Millner in such conversations show any lack of accuracy of memory in regard to persons & things & inability to express himself otherwise than incident to physical feebleness?

(Objected to by defendants' counsel as leading.)

Ans. I could discern no want of accuracy or incapability other than incident to his weak physical condition, & there really was nothing in that either.

Any further this deponent saith not.
(Signed) HENRY S. TAYLOR.

W. R. HOFF, whose name does not appear in the notice for these depositions, is introduced by plaintiffs & this objection waived by defendants' counsel. His introduction as witness, however, is objected to on the grounds that Jas. R. Millner, one of the de-
147 fendants, was at & before the institution of this suit & now is an insane man.

Quest. 1. State your name, age, residence, & occupation.
Ans. W. R. Hoff; age, 36 years; residence, Balto. county; occupation, manufactured tobacco broker.
Quest. 2. Please state whether you were ever in the employment of Hoffman, Lee & Co. If yea, in what capacity & for what period?
A. I was book-keeper for them for four years. I think I succeeded Mr. Thelin, & I was succeeded on leaving their employment by Joseph T. Manning.
Quest. 3. Do the books of said concern kept by you during that period accurately show the transactions thereof in due course of business?
Ans. They do.

And further this deponent saith not.
(Signed) W. R. HOFF.

JOSEPH T. MANNING, whose name does not appear in the notice for these depositions, is introduced by the plaintiffs & this objection waived by defendants' counsel. His introduction as witness,
148 however, is objected to on the ground that Jas. R. Millner, one of the defendants, was at & before the institution of this suit & now is an insane man.

Quest. 1. State your name, age, residence, & occupation.
Ans. Joseph T. Manning; age, 27 years; residence, Balto. city; occupation, salesman.
Quest. 2. Have you been in the employment of H., L. & Co.; &, if so, in what capacity, & who, if any one, did you succeed?
Ans. I was in the employment of H., L. & Co. from 1871 to 1882, first as clerk, afterwards as book-keeper from 1876 to 1882, 6 years, & I succeeded Mr. W. R. Hoff, who instructed me in the system of keeping their books.
Quest. 3. Do the books of said concern, as kept by you, show correctly the transactions thereof for that period?
Ans. They do.

And further this deponent sait- not.

JOS. T. MANNING.

STATE OF MARYLAND, *City of Baltimore*, } *ss*:

I, Felix R. Sullivan, a notary public in & for the city of
149 Baltimore, in the State of Maryland, do hereby certify that the foregoing depositions were duly taken before me, reduced

to writing by me, and signed by the witnesses respectively before me, at the place & times therein mentioned, pursuant to the annexed notice.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Baltimore city, State of Maryland, this seventh day of September, A. D. 1885.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

Costs of taken above depositions, reducing same to writing, notices, certificates, seals, affidavits, & postage, ($75.50) seventy-five $\frac{50}{100}$ dollars, the receipt of which from plaintiffs is hereby acknowledged.

[SEAL.] FELIX R. SULLIVAN,
Notary Public.

The *following* depositions were endorsed as follows, to wit: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Millner *et al.* Baltimore. Depositions for the plaintiffs. Open- Sept. 29, 1885, by consent of both parties, by counsel, in writing filed with this case. Chas. 150 Martin, clerk. Rec'd & filed Sept. 10, 1885. Chas. Martin, clerk.

With the foregoing depositions were filed a lot of exhibits, marked Exhibits Sullivan from 1 to 12; which said exhibits are in the words and figures following, to wit:

(Copy.)

Mr. Jas. R. Millner, Axton, Va., in account current with Hoffman, Lee & Co.

Int. at 6% to Feb'y 27th, 1873.

1873.			
Jan'y 20.	To am't due us this day as per ac.		
	r'n'd	$23,360 61	
	int., 39 ds., at 6%	151 85	
			$23,512 46

CR.

By open sales, 67 boxes		2,359 54
" stock on hand:		
1871 stock, 97½ "Golden Lump"	5,567	
1872 stock, 81½ "Golden Lump"	4,521	
178½	10,088 lbs., @ 58c.	5,851 04
		8,210 58

Estimated commission, 5%	410 52		
St'ge, actual, to 20 March, '73	33 81		
Fire ins. to 20 March, '73	12 46		
		456 79	
			7,753 79
			15,758 67

E. & O. E.
Balto., Feb'y 25, '73.
Exhibit Sullivan No. 1.

151 The following was filed as Exhibit Sullivan No. 2, & is in the words & figures following, to wit:

(Copy.)

AXTON, VA., *March* 11, 1873.

Messrs. Hoffman, Lee & Co., Baltimore, Md.

DEAR SIRS: While in Danville with y'r Mr. Hoffman I was so annoyed about my business I failed to mention to you Mr. Ball's letter to me relative to charges that C. A. Pritchett said that Mr. Lee & Mr. Ball made against me. Just say to Mr. Lee & Mr. Ball that Mr. Ball's explination is not satisfactory, & if other people had of attended to their own business there never would have been said what has been said & done. I only blame you all, gentlemen, for selling my tobacco so low & bringing me so heavily in debt to you, & then taking my property in payment of your debt without ever giving me a chance to work to pay for it or pay what the property would actually sell for. Mr. Hoffman remarked to Mr. Hoffman
152 (*sic*) in Danville that I was childish. If he had been turned loose upon the world with a family to take care of, & then believing that I had a lawyer writing in a manner that would take the little personal property, outside of the mortgage, I reckon he would have appeared childish also, & as Mr. Robertson was writing of the agreement (the manner in which he was writing it) it would have carried everything that I had, even down to the watch in my pocket, if I had not have stopped him. If you had of said to me that here was a large debt that we know you can't pay, but will try to pay us in one, two, or three years what your property will actually bring, & we will furnish you two or three thousand dollars, & give you fifty per cent. upon shipments, & pay the tax to enable you to pay us & get a start in the world, as you have done with others, it would have looked liked you wanted me to succeed. It would not of been from any fear of the result of your loosing your money, because I don't think you, as much as you
153 *as much as you* dislike my course towards you, think that I would sell myself for the pitiful sum of three thousand dollars, & you have agreed to furnish others with money that have done business less time- with you than I have & said about you

what I have never said, & I hope you may never find any man or party in Virginia that will act any worse towards you than I have done. I have complied with every contract that I ever made with you, both written & verbal, & give you my property when I could do no better, but instead of that you turned the cold shoulder & even object to my working the fixtures this year.

Respectfully, JAMES R. MILLNER.

Endorsed: Copy. Exhibit "Sullivan No. 2." H., L. & Co. *vs.* Millner. 11th March, 1873. J. R. M. to H., L. &. Co.

The following was filed as Exhibit Sullivan No. 3, & is in the words and figures following, to wit:

154 "EXHIBIT 3."

BACHELORS HALL, PITT. CO., VA., *Dec.* 19. '72.

Mess. Hoffman, Lee & Co., Baltimore, Md.

DEAR SIRS: We received a letter on yesterday from Mess. Robertson & Green, of Danville, advising us not to buy any fixtures of Jas. R. Millner; that the — granted him has been revoked. Robertson & Green's letter bears date of Dec. 12th, while that of the P. O. carries the 18th inst. We were in Danville in Sept. last; tried Mess. Crews & Rodenheiser for fixtures. Their prices being rather tall, we refused to buy of them. Our brother heard of it and proposed to sell us a part of his if you would grant him that privilege. We went up to see his fixtures but could not trade with him at the time, but shortly afterwards Jas. R. said that you had given him the liberty of disposing of a part of them and showed a letter from you dated, as well as we recollect, the 4th of Oct. After Jas. R. telling of us his condition we bought the fixtures and moved some of them about the 28th Oct. to finish work with,
155 and the balance of them are now at Jas. R.'s factory, and on the 7th of November James R. came down for the money & said he was compelled to have it, which was $800. Not having the money by us, we went to Danville and telegraphed to you on the 8th Nov. the following: "Give authority to draw at sight for $1,000; compelled to have it; do not refuse it;" to which you replied, "Do not draw; give us particulars by mail." We had then to make other arrangements, knowing that Jas. R. needed the money, and knowing him so well as to contracts we turn out, and in the course of ten days we succeeded in raising ample funds in supplying our wants; but if James R. will take the fixtures back and pay us our money we will deliver back what we have and have nothing to do with it, for we can now buy a *high*draulic press for almost the sum we paid him, which will answer our purpose much better than the fixtures bought of our brother. We have nothing to do with yours and James R. Millner's matters, but as a brother and friend
156 to both parties we would advise you both to settle the difference between you fair and just with one another, without any lawsuit or difficulty, for the agitation of the thing already has

damaged your house here more than you have any idea of. While some might advise you to push the matter with all the force that a court could give for their special purpose, only watching for an opportunity should it terminate in a lawsuit, we candidly do not believe that you could get a lb. of tobacco from this section only from thoes who are compelled to ship to you for the want of funds and a heavy debt hanging over them, and as Western capitalist- are anxious to loan out funds we believe the most of them would borrow the funds and pay out rather than work out. You may doubt their getting funds, but, with the endorsation of some of their agents here, they are anxious to loan funds to manufacturers.

Gentlemen, what we have said here we have done with the
157 purest of motives to both parties, for of all things that we do abominate on earth it is a difficulty in business matters; but your Mr. Hoffman heard our sentiments on this subject last Feb'y, 12 months ago, in Danville. We leave the matter; trusting that you may settle satisfactory to each other. We now turn to a more interesting subject for ourselves.

We have nothing from you since Nov. 11th. You will please give us a full and complete statement of last year's operation, with prices seperate from this year's operation, and also one of this year's business, giving No. of boxes and No. of pounds, with prices sold, and how much now on hand, and amount of money furnish-, license, &c., and how we stand with you. We want a full and complete statement of the last two years' operations seperate and distinct from one another, so that we can shape our course for the next season. Furnish this at your earliest convenience. What do you think of of the prospects for next season?

Without anything more for the moment, we are, dear sirs,

Your friends, &c., MILLNER BROS.

158 The following was filed and marked as Exhibit Sullivan No. 4, and is in the words and figures following, to wit:

"EXHIBIT No. 4."

BACHELORS HALL, VA., *July 24th*, '73.

Mess. Hoffman, Lee & Co., Baltimore, Md.

GENTLEMEN: James R. Millner, having made some very low sales, is speaking of changing his business. We have advised him to turn it over to you. While he seems to be perfectly willing to do so, he will not do so until you write to him that you desire his business, and that you will never attempt to make any more out of *of* him on the old score, and that you are perfectly satisfied with the settlement you made with him. He has a good credit and can always buy and work heavily on a small advance, and for his, yours, and our interest we think you had as well let bygones be bygones. You having refused his business and he now being connected with an-
159 other house, though we told him you would have taken his business if he had not of made his own terms, places him in

a delicate position relative to asking you to accept of it. You having had control of his goods for years, it is more than likely that you could place them to better advantage than any one else, as you would have a demand for the goods. Keep the Blair Athol up pretty heavy. She is doing fair in the West; sold 200 45-lb. packages at factory door; cost 55 cents. Try Cincinnati with some. We have an order, but will not fill it. Do you know anything of D. J. Walshe & F. V. Simmonds, & who are they (of your city)? Are they all right? Let us know. Please consider this letter confidential; like to hear from you on sales.

Your friends, MILLNER BROS.

The following is filed and ma-ked Sullivan Exhibit No. 5, and is in the words & figures following, to wit:

James R. Millner, Esq., Axton, Pitt. Co., Va.

160 D'R SIR: We have a letter from Messrs. Millner Bros., prompted, no doubt, by a friendly feeling to you and ourselves, intimating that your interest would be promoted if we would resume the agency of your tob'co. They go on to say that they believe such to be your feelings, but that, in the closing of our late business intercourse, our actions or expressions appeared to you to discourage such an overture on your part; and, furthermore, that you wished some assurance that the transfer of your property to us was final and in full satisfaction of all claims against you. You should know us well enough to be assured that had the contract freeing you from all past obligations been simply a moral one that we would resp-ct it in its full intent, but it was legal, and under it we parted with all claim upon you.

Now, in regard to a renewal of our business intercourse, so much has been written and spoken by you casting censure upon us for the loss sustained by you in the past two years that a resumption

161 of those confidential relations—for absolute trust must exist between principal and agent—cannot take place without a disclaimer on your part. If, under a calm view of the past, your own sense of justice prompts you to say to us that your disasters arose from no fault of ours, we will become your agents and do all in our power to promote your welfare.

We will authorize your sight drafts for 30 cents per lb. on shipments and send you, on examination of goods, any balance to extent of 70 per cent. market value which we may think they justify.

Very truly yours, HOFFMAN, LEE & CO.

P. S.—We have your letter of the 23 inst. We see no use in again reverting to the past; too much has already been written. We will only say that, judging from your last letter, we did misapprehend your former one.

Very truly yours, HOFFMAN, LEE & CO.

162 The following was filed as Exhibit Sullivan No. 6, and is in the words and figures following, to wit:

"EXHIBIT No. 6."

JULY 28TH, '3.

Mess. Millner Bros., Bachelors Hall, Va.

D'R SIRS: We have your- of the 23rd inst. touching upon Jas. R. Millner'- affairs. We do not know whether it was your wish that we should in writing to him revert to yours to us, but we could not otherwise open the matter with J. R. M. We enclose a letter to him; read it, and, if you do not disapprove of the use we have made of yours to us, hand it to him.

We will write to you on your own affairs to-morrow.

Y'r friends, HOFFMAN, LEE & CO.

The following was filed and marked as Exhibit Sullivan No. 7, and is in the words & figures following, to wit:

163 "EXHIBIT No. 7."

AXTON, VA., *April 15th*, 1873.

Mess. Hoffman, Lee & Co., Baltimore, Md.

DEAR SIRS: Your favor of the 17th March to hand.

Gentlemen, after viewing all the surrounding circumstances in connection with the management of my business heretofore by you, I have come to one conclusion, as you say you have been heavy loosers by me, and I have lost all by you, that if you are willing to forgive and forget the past I am willing to do the same and give you my business in the future. You can be compensated for losses sustained by me and by which you can compensate me for what I have lost if you will work for me. The most of the difficulty, as you know, that has occur-ed with us has been by the talks of others, whose tattling tendency should be stopped at every commencement.

If a refusal to listen to the scandalous catalogue of private
164 weakness or error were accompanied by severe reprimands society would be more benefitted and there would be fewer difficulties. I have been offered the money by other parties to work the tobacco; by my shipping all that I have worked and paying the charges, which would amount to at least ten per cent. I am unwilling to pay it. I am willing to pay the 5 %, y'r com., but the other charges I am not willing to pay, and there is no use in it, as you pay out the money yourselves. Of course you make nothing by it, and it amounts to as much as your commission and can be more to the manufacturer.

My proposition is simply this: If you will advance me some time in May $1,500 and some time in June $1,500 and pay the tax upon the tobacco as I get it ready, and give me upon same as you receive it 70 per cent., I will pay 6 per cent. interest upon all advances until paid by me to you and ship you all I have worked, provided

you will do my business in this way. When I get a lot
165 ready—say 50 or 100 boxes—draw upon you for tax upon five or ten boxes and ship it as a sample of lot, & you sell it to be

delivered in Danville, to be shipped to you or the parties sold to, and I have nothing more to do with it after it leaves Danville but to pay you five per cent. for selling it—that is, you take my tobacco in Danville, Va., clear of charges and sell and pay me my money at five per cent. upon amount sold for. By this means I save the interest upon taxes and will warrant the tobacco to sample. I want my tobaccoes sold straight along with the market. I have made arrangements with Millner Bros. to work for me all the tobacco that I can get the money to pay for. They say they think they can work 150,000 lbs. more — they can sell readily themselves or care to make this season. They have the room and by increasing their force can work half a million, and I prefer getting them to work my tobaccos, as I can get them worked right, and it is a very hard matter to employ a manufacturer to attend to your business
166 and get it worked right, and I prefer paying more than it cost- me to work it and have it done right than to work it myself. $3,000 in the way I have mentioned is all I want to work it, and believe by getting 70 per cent. upon shipments I can work at least 100,000 lbs. nett. It is true you have nothing to go upon for the money you advance me except my word as a gentleman, and if you think I would sell myself for it, or if either member of your consern objects to my business, I don't want your money if I have a chance. I believe I can work out of my difficulties this year, as I will not have more than $5,000 to pay after selling off the fixtures that are here now, including the $1,000 I get for my Gold Twist brand.

I have been offered $2,000 to do business on, & I can control all I can work with it, & I can get it & use it in the business with you by paying the interest every 60 days at 8 per cent., but don't
167 want to take it if I can make any arrangements with you. I have confidence enough in you to believe if you will try you can sell my tobaccos better than anybody else, and I am willing to risk you if you are willing to risk me. I have made the deed of my property to you, but as yet have not handed it to Mess. Robertson & Green, knowing that my old deed will answer me. Without the property is transferred by rendering deed, which there is no use in, as land bonds will answer Millner Bros. until I pay them for the property, and as Millner Bros. and yourselves would be at some trouble in transferring deed, I think it best to remain so until you & them settle it; then transfer the agreement between you & me to them, and when I give bonds or pay them they transfer same to me, which makes old deeds good; and as Millner Bros. are to fill the bill in tobacco I see no use in it; and if it is not done I can buy some tobacco in time, as no one knows how I settled my business with you, but to have it vended everybody would know it. Then I would have to pay cash for everything; but if you require it
168 I will deliver it according to contract.

If my proposition suits you, you can have two contracts drawn according to my proposition in this letter, and sign them and send them to me, and I will sign them and return one to you. If it don't suit you, you need not trouble yourself to answer same, but please

consider my letters confidential. I will want the money about the 15th or 20th May and June, I suppose. I only want to draw upon you for same through Mess. Patton, Sons & Co. as my tobacco comes in. If you accept my proposition give me a letter to them authorizing same, so that as I get my tobacco ready, before I get the last $1,500, I shall ship you over $1,500 worth of tobacco. My object is to work heavily if I can make and quit if I find I am looseing. You know my different brands (I can work all except my Gold Twist brand), and you can say what you think is best you can do with them to make them equally as good or better and the workmanship all right. I can
169 work my strictly fine tobacco in my fine Gold Twist brand and I intend to make all my brands better than I have ever made them, & Millner Bros. promised me to make my fine Gold Twist brand better than I have ever made it, and I hope for my interest after this year that you will put up the price; that tobacco ought to sell for eighty cents, tax paid, and you can get the control of it—they say this year all they will work of it—if they can get a price that will justify them in giving the whole of it to you. I have made you the proposition in good faith and expect you to meet it in the same way. If you accept of it I have nothing to say of the past, and neither do I ask you to refer to the same; but there is one thing I do ask of you—keep my business in the future to yourselves, if you accept it, and I will do the same, and — the next man tell you what I have said or done write to me to know whether it is so or not before you say anything, and when you wish to know anything relative to
170 me write to such men as W. T. Clark, W. S. Patton, Pace & Tolbott, Thomas S. Flournay, or any other reliable gentleman in Danville, and don't write or talk to a set of damn envious, unprincipled men who have always known more about my business than I have known myself. I may be unfortunate enough to die a very poor man, but I shall live as long as I do live carrying an independent spirit and an honest heart. I envy no man & concern myself, as you know, with no man's business, because other people's business is nothing to me and I have nothing to do with it. I mean business now for myself through you or somebody else, and I am going to do it in spite of all the difficulties I have had to contend with. I believe I will yet obtain my object of seeking a fortune before I die in getting it.

You will never have any more moulded tobacco to sell for me.

N. B.—If you write, write soon.

Yours truly, JAMES R. MILLNER.

171 The following was filed as Exhibit Sullivan No. 8, and is in the words and figures following, to wit:

SULLIVAN No. 8.

Hodnett place			20
" "	200	15	1,800 00
Brick "			1,500 00
One place sold			1,500 00
			4,500 00
		(*Sic.*)	
Home place, 550 acres, cost $25,000			12,000 00
Danville			5,000 00
		(*Sic.*)	21,500 00
Pleasants		10,000	
Less		3,500	
		6,500	

This is a copy of Exhibit Sullivan No. 8, referred to by J. P. Millner in his deposition.

F. F. BOWEN, *Com'n'*.

A copy.
Teste (for U. S. c't):

F. F. BOWEN, *Com'n'*.

Endorse- as follows, to wit: Copy Sullivan 8. Filed June 10, 1886. Chas. Martin, clerk.

The following was filed as Exhibit Sullivan No. 9, & is as follows, to wit:

172 "EXHIBIT 9."

DANVILLE, VA., *July 15th*, 1873.

Mess. Hoffman, Lee & Co., Baltimore.

DEAR SIRS: Yours of the 10th to hand, from which we find you are driving the price, but you are evidently driving in the wrong direction. Suppose you put up for the night & in the morning change direction. We will send you a new team with more & better bottom. We would like to know what you are expecting to put flue-cured at? We can make it, but not at the prices we have been selling at. We will make 150⅛ boxes, 4 ounces; 150⅛ boxes, 5 ounces, out of B. A. Eller, with a rich wrapper; put the same in Danville at 48 cents or through your house at 52 cents. We positively will not make it for less. We would not make but little money on it at thoes prices, but wishing to reinstate the brand we will work it at thoes figures. We fear that Baltimore will drive
173 us off entirely and force us to seek other & better markets for our goods. We have not sold a box of tobacco outside of your market but what we have advanced the prices at least 5 cts. per lb. It is true you get off larger lots, which keeps a man's

finances easy, but we are glad to inform you that $12,000 more will put us square with the world. The next ten days will give us that amount, which will be all we will need until another season opens; consequently we can afford to wait and work of- our goods in small lots and at better prices, by which means we hope to make some money.

We draw at sight for $1,434.60 to tax 7,198 lbs., which will leave this place in a few days—lot of caddies which were ordered.

Your friend-, MILLNER BROS.

Do not forget to instruct bank in regard to $6,000 for the 17th of July.

174 The following was filed as Exhibit Sullivan No. 10, & is in the words and figures following, to wit:

"EXHIBIT 10."

BUFFALO LITHIA SPRINGS, *July 5th*, 1885.

Messrs. Hoffman, Lee & Co.

GENTLEMEN: This will inform you that Hon. A. M. Aiken, of Danville, has consented to take charge of the matter between us, R. W. Peatross, Esq., having retired from the case.

Please inform me at once as to what day you can meet him at this place.

Very respectfully, JAMES R. MILLNER.
PUGH.

The following was filed and marked Exhibit Sullivan No. 11 and is in the words and figures following, to wit:

"EXHIBIT 11."

BUFFALO LITHIA SPRINGS, VA., *June 17th*, 1885.

Mess. Hoffman, Lee & Co., Baltimore.

175 GENTLEMEN: You asked my professional opinion upon the mental condition of Mr. Jas. R. Millner.

I have seen and examined Mr. Millner a number of times. His mental condition is as follows: He is able to converse intelligently and coherently; to convey in his mind a distinct and connected train of thought; fully understands the difference between right & wrong, and comprehends what responsibility is. He know- the force of what he says or confesses. There is some cereb-al irritability in his case, due to sympathy with chronic interstitial nephritis, from which disease he is suffering. He is obliged, therefore, to converse slowly—his type of mind being rather sluggish, but not indicative of insanity.

Yours very truly,

G. HALSTED BOYLAND, M. D.,
Resident Physician at Buffalo Lithia Springs.

Hoffman, Lee & Co., Baltimore.

176 The following was filed as Exhibit Sullivan No. 12, and is in the words and figures following, to wit:

"EXHIBIT 12."

BUFFALO LITHIA SPRINGS, VA., *June 17th*, 1885.

Robert G. Hoffman, Esq., Baltimore.

MY DEAR ROBERT: Your favor of the 15 inst. received. Since you left here Mr. Millner has told me verbally that he had $12,000.00 at the time the transaction you refer to took place. He evidently intends to make restitution on the basis you have talked about and asked me a hypothetical question as to what a man holding back money at a settlement should do. I replied, "Make restitution." The next day he showed me a letter from his counsel in Danville advising him that Hoffman, Lee & Co. were investigating with a view to bringing suit, telling him to be guarded in any interview with them or their counsel should they perchance come to the Springs, and warning him not to sign anything. Mr. Millner
177 then remarked that he did not care about that, and the same afternoon came to my office and requested me to write at his dictation the letter that was mailed to you on Monday last, the 15th inst., and which you probably have now.

He is not so well yesterday nor to-day, owing, I think, to the extreme heat and a little diarrhœa, but his mental condition is as described in the professional opinion enclosed.

I received in the 15th inst. a letter from Mr. Harrison, and, in accordance with his request, got from Col. Goode, a lawyer of distinction, his opinion that Millner'- talk and continuous purpose to settle were not compatible with insanity. He did not regard him insane from his standpoint, a legal one.

I give you the sum & substance of what has taken place, but cannot always recall exact words, as you may readily understand from the number of conversations and communications of different kinds I have had in the matter.

178 Ellen sends love & Florence kiss.

With kind regards, yours very truly,

G. HALSTEAD BOYLAND.

And again, on another day, to wit, in the clerk's office of the circuit court of the United States for the western district of Virginia, at Danville, within and for said district, on the 17th day of September, A. D. 1887, the following deposition of Dr. G. Halstead Boyland was this day filed with the papers in the foregoing cause of Hoffman, Lee & Co. *vs.* Jas. R. Millner *et al.*; which said deposition, with the notice for the taking of same annexed, is in the words and figures following, to wit:

To James R. Millner, John P. Millner, in his own right & as surviving partner of himself and Joseph T. Millner, dec'd, late partners as Millner Bros., and Joseph D. Blair, administrator of said Joseph T. Millner, dec'd:

179 Take notice that we shall, at the rooms of James P. Harrison, at Baffalo Lithia Springs, in the county of Mecklenburg, in the State of Virginia, on Monday, the 14th day of September, 1885, between the hours of sunrise and sunset, take the deposition- of Dr. G. Halstead Boyland, Col. Thos. F. Goode, & others, witnesses, to be read in our behalf in a certain suit in chancery now pending in the circuit court of the United States for the western district of Virginia, at Danville, wherein we are plaintiffs and you are defendants.

If for any reason the said depositions be not commenced or, if commenced, be not concluded on said day, the same will be continued from day to day & from time to time, at the same place & between the same hours, until taken and compleated.

HOFFMAN, LEE & CO.,
By BERKELEY & HARRISON,
GREEN & MILLER, *Counsel.*

Danville, August 12, 1885.

Endorsed as follows, to wit: Executed this 14th day of
180 August, 1885, by delivering a true copy of the within notice to James R. Millner, at Buffalo Lithia Springs, in the county of Mecklenburg, Virginia. A. B. Moore.

STATE OF VIRGINIA, }
County of Mecklenburg. }

I, W. T. Atkins, a notary public in & for said county of Mecklenburg & State of Virginia, do certify that A. B. Moore, whoes name is signed to the foregoing statement, this day personally appeared before me in my said county & made oath upon the Holy Evangelists of God that he did serve a true copy of the within notice to Jas. R. Millner, at Buffalo Lithia Springs, on the 14th day of August, 1885, as stated above.

Given under my hand this 14th day of August, 1885.

W. T. ATKINS, *N. P.*

We accept service of the within notice for Jno. P. Millner.
Aug. 20th, '85.

PEATROSS & HARRIS, *Attorneys.*
H.

Notice accepted.

J. D. BLAIR,
Adm'r of J. T. Millner, Dec'd.

[Endorsed:] Hoffman, Lee & Co. *vs.* Millner, Jas. R., & *als.* Notice to take depositions at Buffalo Lithia —. Original.

181 The deposition- of G. Halstead Boyland and Thomas F. Goode, taken before me, W. T. Atkins, a notary public in and for the county of Mecklenburg & State of Virginia, at Buffalo Lithia Springs, in said county & State, this 14th day of September, 1885, between the hours of sunrise & sunset, pursuant to notice hereto annexed, to be read as evidence on behalf of the plaintiffs in a certain suit in chancery now pending in the circuit court of the United States for the western district of Virginia, at Danville, wherein Hoffman, Lee & Co. are plaintiffs and Jas. R. Millner, Jno. P. Millner, in his own right and as surviving partner of himself, Joseph T. Millner, dec'd, late partners as Millner Bros., and Joseph D. Blair, adm'r of said Joseph T. Millner, dec'd, are d'f'ts.

Present: J. P. Harrison, att'y for plaintiffs; A. M. Aiken, att'y for defendants.

Dr. G. Halstead Boyland, being sworn the whole truth to speak touching the matter at issue between the parties, deposes & says:

1st. quest. b- plaintiffs' counsel. What is your age, residence, & occupation?

182 Ans. (1st. quest.) My age is 40 years; Baltimore, Maryland, is my residence, and I am a practising physician.

2 quest. by same. What official connection, if any, have you with the Buffalo Lithia Springs?

Ans. I am resident physician.

3rd by same. Do you know the plaintiffs and def't, Jas. R. Millner?

Answer. I do.

4 quest. by same. Are you related or connected with any one of them; if yea, to which one, and how?

Ans. I am related by marriage to the plaintiff, Robt. G. Hoffman. He is my wife's first cousin. I am not related to any of them.

5 question by same. How long have you known Jas. R. Millner?

Answer. I was resident physician at Buffalo last year. He came to the springs in the latter part of the summer of the year 1884, and I have known him since that time.

6th question by same. When and from whom did you first hear that he had had any business relations with the plaintiffs in this suit?

183 Answer. From himself, in June, 1885.

7th question by same. How long prior to that time since you had seen or corresponded with the plaintiffs or either of them?

Answer. I took dinner at Rob't G. Hoffman's in the fall of 1884. I had not seen any of the plaintiffs since that time up to June, 1885. I had never corresponded with any of them up to that time.

8 question by same. Please state how Mr. Millner happened to mention his connection with Hoffman, Lee & Co. to you, and what he at that time said to you in reference to it.

Note.—This and all subsequent questions intended to *il*licit evidence of any admission, confession, or declaration of the def't, Jas. R. Millner, upon the subject-matter of this suit, made either before

or subsequent to its commencement, are objected to by counsel for the defendants upon the grounds that the said Jas. R. Millner was before & at the time of making such admissions, confessions, or declarations and is now an insane man and incapable of
184 binding himself or his codefendants by any admission, confession, or declaration.

NOTE.—Counsel for plaintiffs hereby consent that the foregoing objections may be considered as made to any and all subsequent questions as fully as if the same were written out *of* the questions were propounded.

Answer (8 quest.). Knowing that I was from Baltimore, he spoke of having been there on business at different times, and I asked him if he knew several parties there, among them Mr. Hoffman, and he said he had business connections with Hoffman, Lee & Co., and that they had sold his tobacco. This was about all that transpired in the first of our intercourse.

9th question by same. Please examine Exhibit "Boyland No. 1" with the bill and say if you wrote the same, at whose instance, & what led you to do so.

Answer. I did write it, at the instance of Mr. Jas. R. Millner; his earnest request led me to write it.

10th question by same. Did he state at the time why he wanted to see Mr. Hoffman? If yea, state it.

185 Answer. He did. He stated that he had business with Rob't Hoffman that he wanted to arrange and preferred to see him personally.

11th question by same. Did he enter into the detail of his business at all at that time?

Answer. He did not.

12th question by same. Did you write Exhibit "Boyland No. 2;" if yea, why?

Answer. I did, in reply to Mr. Hoffman's telegram.

13th question. Please state when you received such telegram and if it was in answer to "Boyland No. 1."

Answer. About 10th of June, 1885. It was in answer to my letter marked "Boyland No. 1."

14th question. Who was present & what occurred when said telegram was received?

Answer. No one was present when I received the telegram; it was brought to me by a messenger and I replied to it by letter.

15th question. Did you pay for the message, and by whom were you reimbursed?

Answer. I told Mr. Millner that I had a telegram about his
186 business; it was put on Mr. Millner's bill and reimbursed to him by Mr. Hoffman.

16th question. Did Mr. Millner object to correspondence by telegraph at that time; if so, why?

Answer. He did; he said it was useless and expensive & could be done by letter.

17th question. Did Hoffman come to Buffalo; if so, when, and who came with him?

Answer. He came Thursday, 11th June, accompanied by Jas. P. Harrison.

18th question. Had Millner up to that date told you the nature of his business with Hoffman?

Answer. No; he simply said he had business with Mr. Hoffman.

19th question. Did you see Mr. Hoffman that night; if yea, what was said about acquainting Mr. Millner with Mr. Harrison's presence?

Answer. I saw Mr. Hoffman that night; it was deemed best not to acquaint Mr. Millner with Mr. Harrison's presence at that time.

20th question. When and where did Mr. Hoffman meet Mr. Millner?

Ans. At breakfast the next morning.

21st question. When & where did Mr. Harrison first meet Mr. Millner at that time?

187 Ans. On the morning of the 12th, on the porch or grounds, I think.

22nd question. Do you know whether or not Mr. Harrison had avoided Mr. Millner and who first sought the audience?

Ans. He had avoided Mr. Millner. I believe Mr. Harrison said he would not go & speak to Mr. Millner, or words to that effect.

23rd question. Did you see the meeting between them?

Ans. I did.

24th question. Where did it take place?

Ans. On the grounds.

25th quest. What was Mr. Harrison doing at the time?

Ans. I don't recollect.

26th quest. Did Mr. Millner, after Mr. Hoffman had left, disclose to you the nature of their conf-rence & its result?

Ans. Not immediately. He spoke in a general way about it, but it came out in other conversations later on.

27th question by same. Please state what Mr. Millner in these conversations told you of his relations with H., L. & Co. in the past & of what had passed between him & Mr. Hoffman at said visit.

188 Answer. He said that some years before, in making transactions with them, he had kept back twelve thousand dollars, and that he desired to make restitution by compromise. He told me that a proposition had been made of $5,500 in Danville property and the balance, $2,000 or $2,200, in cash. I think these are the figures he gave.

28th question. Was that proposition accepted or refused; did he say?

Ans. I don't recollect whether he said anything about that or not.

29th question. For whom, if any one, did you act in this matter?

Ans. I acted partly for Mr. Millner & partly for Mr. Hoffman.

30 quest. Did you write Exhibit "Boyland No. 3;" if yea, was it dictated to you; &, if so, by whom?

Ans. I did write it. It was dictated to me by Jas. R. Millner.

31st question. Did Jas. R. Millner tell you that any effort had been made to have him declared insane; if yea, by whom?

Ans. He said that some of his relations & others were under the impression that he was insane and ought to be confined in
189 an asylum for treatment. He did not tell me that any effort had been made to have him declared insane by legal process.

32 quest. Was your professional opinion asked as to his sanity? If yea, please examine letter, press copy of which is herewith filed, marked Exhibit "Boyland No. 4," dated June 15th, 1885, and say whether that is the request.

Answer. Yes; and that is the request. I destroyed the original.

NOTE.—Letter here filed, marked Exhibit "Boyland No. 4," along with press copies of letters from Hoffman, Lee & Co. & Rob't G. Hoffman dated June 15th, June 19th, June 23rd, June 22nd, June 29th, 1885.—W. T. A., N. P.

33 quest. Did you receive the other letters called for by Exhibit "Boyland No. 4?" If yea, what did you do with the originals?

Ans. I did, and destroyed the originals.

34 quest. Did you give your professional opinion? If yea, examine Exhibit 11 with R. G. Hoffman's deposition in this suit & say whether or not that is a true copy of the same.

Ans. I did give my professional opinion, & I believe that to be a true copy of the same.

189½ 35 question by same. What is your present opinion as to the mental condition of Jas. R. Millner at the date of said professional opinion?

Ans. I think it was then just as I represented it in that opinion.

36th quest. What is the present mental condition of Jas. R. Millner, in your opinion?

Ans. That he is of unsound mind and pos-essed of the opinion that there are — who desire his taking off.

37 quest. Please state fully and professionally whether at present he is kept under any restraint or left to care for himself and to what extent his mental unsoundness extends and to what it is due.

Ans. He is not kept under any restraint & is left entirely to himself. His mental unsoundness extends to the extent of rendering him suspicious of persons visiting the springs; that such persons are the emis-aries of others who have desires upon his life. His condition is at times one of extreme nervous irritability, at others one of religious melancholy, alternating with religious exal-
190 tation. Although his physical condition is comparatively better, his mental symptoms are more pronounced. The cause of his trouble is Bright's disease of the kidneys acting by sympathy upon a naturally sluggish and weak mind.

38 question. Is he left to take care of himself and transact his own matters in the way of paying board, &c.?

Answer. He is not now left to himself in the matter of paying board.

39 quest. In what other respects is he not left to himself, so far as his life here is concerned?

A. He is left to himself in all other respects.

40th question by same. Who attends to his board now, & since when?

Ans. Agents or bankers in Danville, I believe; d[illegible] know how long since.

41 quest. Please examine original letter from yourself, dated June 21st, marked "Boyland No. 5," and say whether you wrote the same, & whether before or since that date has this mental unsoundness developed itself.

Ans. I did write it. The mental condition described above has developed since that date.

191 41 (*sic*) quest. Up to that date what was the condition of his memory and the manner of his recollection?

Answer. He appeared to recollect well, but with some mental effort.

42 question. Is his memory at present impaired? If so, to what extent?

Answer. I have not conversed with him lately, and do not know. He has rather avoided me than otherwise.

43 quest. Did he ever tell you what disposition he made of the $12,000.00 he took from Hoffman, Lee & Co.? If so, what?

Ans. He might have done so, but I can't say positively as regards the disposition of it.

44th quest. Please examine letter-press copies of your letters to H., L. & Co., date- June 17th, 25th, July 3rd, 5th, & 13th, all filed together and marked "Boyland No. 6," & say whether or not you wrote the same as of the dates specified.

Answer. I believe I did.

45 quest. Since Hoffman's visit has Mr. Millner asked you to represent him in this matter? If yea, to what extent & to what purpose?

Ans. He has asked me to be his amanuensis frequently and

192 to use my influence with Mr. Hoffman to induce him to allow more for the property than was proposed.

46th question. What in their replies did H., L. & Co. say as to their willingness to carry out Millner's offer of compromise?

Answer. They said they were willing to settle on a basis of $5,500 for the property and the balance in cash—that is, on the basis of Mr. Millner's proposition.

47th quest. Did you communicate the contents of these letters as received to Mr. Millner?

Ans. Generally I did, omitting only such parts as I thought proper—these parts referring to his family.

48 quest. Did you omit any part which bore directly upon the subject-matter of the settlement?

Answer. I did not.

49th quest. Did he comprehend and appreciate these letters?

Ans. I believe he did.

50th quest. Did he agree to their terms so far as he was concerned?

Answer. He said that Mr. Hoffman ought to allow him $6,000.00 for the Danville property on account of his family, but that
193 he would let it go for the $5,500.00 if he refused to do so.

51st quest. Did he say that any one or more persons stood in the way of the settlement being made effective; if yea, who, and did he take any steps to get rid of such persons?

Answer. He spoke several times of his brother wishing to have things otherwise than he wished them. I do not know that he took any steps to get rid of him.

52nd quest. Examine "Peatross No. 3" with the bill and say whether you saw the original thereof.

Answer. The original, I believe, was read to me by Mr. Hoffman at this place in June last.

53 quest. Examine the latter part of "Boyland No. 1" and say whether you saw the letter of Mr. Hoffman there referred to.

Answer. I think not.

54th quest. Did Mr. Milner change his counsel during the pending of these negotiations? If yea, state when, at whoes instance, and through whoes agency.

194 Answer. He did about July 3rd. I wrote a — for him to Judge Aiken at his request, requesting him to act as counsel for him.

Cross-examination by defendants' counsel:

1st quest. How long has Mr. Millner had Bright's disease?

Answer. To my knowledge, since the early fall of 1884. I think it probable he may have — it some time before. I examined him then & discovered it. He said it had exhisted for some time before.

2nd question. How long before that, according to your opinion, had he had the disease?

Answer. At least 18 months. The symptons appearing at that time would not preclude the disease having exhisted a year or two before that, even.

3rd question. In the form of the disease which Mr. Millner has, at what stage does the action by sympathy upon the brain begin?

Ans. In the latter stage of the disease. It depends sometimes upon the organization of the patient effected. In Mr. Millner's case the cereb-al capacity, being of rather an inferior order, became effected earlier in the course of the disease than is usually the case.

195 4th question. When you first knew Mr. Millner did he have the religious melancholia to which you have alluded?

Answer. He did. It has been a sympton varying with religious exaltation ever since I first knew him, in the latter part of the summer of 1884.

5th question. Has his health fluctuated much during the period of this year's visit to the springs?

Answer. There has been some fluctuation. At times the mental

symptons were worse than at others. Then at other times there was marked improvement in his general condition. His bodily condition is much improved at this time, although his mental condition is worse.

6th question. At what time did he come to the springs this year?

Answer. He was here when I arrived on the 2nd of June. I think he came in May.

7th question. Was there any material change in his health from the time you came until the middle of June?

Answer. No material change.

8th question. Did any conversation take place between Mr.
196 Hoffman & yourself about Millner on the night of the former's arrival here, or the next morning before he saw Millner?

Answer. Yes; Mr. Hoffman informed me that Millner owed him some $20,000.00, interest and principal, more or less, & that Hoffman, Lee & Co. were the victims of a fraud, and said in substance that they desired to settle the matter, either by a compromise or by a suit.

9th question. Do you remember any special question asked you by Mr. Hoffman that night?

Answer. He asked me to go down to the room to meet Mr. Harrison. This is all I recollect.

10th quest. On the 6th day of June you wrote Mr. Hoffman that the cereb-al symptons of Millner rendered him incapable of transacting business. Did you tell Mr. Hoffman that Millner was, on the 11th of June, capable of transacting business?

Answer. The letter of the 6th of June was really Millner's letter, part in my words. It was written *of* several requests of Mr. Millner to me to write Mr. Hoffman and after several conversa-
197 tions with him upon the subject. Although Mr. Millner's mental condition would not allow him to take charge of business as a business man at any time since he has been under my care, yet I thought him possessed of a sufficiently disposing mind to arrange this matter with Mr. Hoffman, and therefore I may have told Mr. Hoffman that he was capable of transacting this particular business. Transacting business in the letter of the 6th of June refers to the mental effort of writing as suggested by Mr. Millner himself.

11th question. Was it not in obedience to the letter of the 6th of June that Mr. Hoffman came to the springs to see Millner?

Answer. It was.

12th question. Had you learned from any person what the nature of Millner's business with Hoffman was before the latter came to the springs?

Answer. I had not.

13th question. Did you think or have reason to believe that Millner intended to make any such disclosures as you afterwards learned that he did?

198 Answer. I did not.

14th question. Do you know whether Millner knew that a

suit was meditated against him by Mr. Hoffman when the two had their interview at that time?

Answer. I do not think he knew it. It was afterwards that he ascertained that Hoffman would sue him if he didn't compromise.

15th question. Do you know what amount of money is involved in this suit & whether the character of Millner & that of some members of his family is involved?

Answer. The amount of money is twenty-odd thousand dollars, as represented to me by Mr. Hoffman, and the character of Millner & some members of his family is involved.

16th question. From a knowledge of thoes facts & your knowledge of Millner's health do you or not think he should have had a friend or adviser present at that interview?

Note.—This question is excepted to by plaintiffs' counsel, as it calls for the opinion of the witness.—W. T. A., N. P.

Answer. The interview was very protracted & had a perceptible influence upon his health, & it would certainly have been advis-
199 able to have had a friend or adviser. It would have been better for his health if it had not taken place, as his health was much worse afterwards. I do think he ought to have had a friend and adviser present. I mean to say that the interview made him nervous and had a bad effect upon him for a day or two.

17th question. Did Mr. Hoffman ask you to be present at the interview?

Answer. He did.

18th question. Did he tell you why?

Answer. I believe it was that he might have a witness.

19th question. Did he tell you what would be revealed?

Answer. He did not tell me what would be revealed, but I knew from the conversations with him that the interview was to be about the settlement of this business. I knew his views of the case.

20th question. You knew, then, that Millner was to make some confession that he had defrauded Hoffman, did you?

Answer. I did not know what confession Mr. Millner might make,
200 but knew only that he wanted to settle the business. At that time he had confessed nothing to me.

21st question. Did you know that he was to make any confession?

Answer. I did not.

22nd question. What was it that Hoffman desired you to witness?

Answer. To hear the conversation & be present generally, I presume.

23rd question. He had not interviewed Millner himself then, had he?

Answer. He had not.

24th question. Did he ask you to be present after he had interviewed Millner & gotten his confession?

Answer. He did not.

25th question. Is not Rob't G. Hoffman a man of extraordinary intelligence & acuteness of mind?

Answer. He is. He is certainly above the average.

26th question. In a business contest who would have the advantage—Hoffman or Millner?

NOTE.—This question is objected to by pl'ffs' counsel as improper & illegal.—W. T. A., N. P.

Answer. It would be like a contest between a giant & a baby, Hoffman being the giant & Millner the baby.

27th question. Where did the interview take place?

201 Answer. In Millner's room.

28th question. With closed doors?

Answer. I think the doors were open, it being a very warm day.

29th question. After you received the letters filed as Exhibit "Boyland No. 4" did you continue to act for both Mr. Millner & Mr. Hoffman about the matter?

Answer. I think I acted for both all the way through.

30th question. Look at the letter shown you & say whether you wrote it & to whom & how long after you received the letter of the 23rd day of June, 1885, from Hoffman, a exhibit marked "Boyland No. 7."

Answer. I did write it to Judge A. M. Aiken, except the words, "Judge Aiken, please come to me at once. Yours truly, James R. Millner," which were written by James R. Millner in my presence, and it was about six days after I rec'd the letter dated the 23rd.

31st question. Is there any special subject upon which Millner prefers to dwell in his conversations?

Answer. The subject of religion is *apperiant* in his mind. As there is usuall- either religious melancholia or religious ex-

202 altation, it amounts to monomania, and he is possessed of the belief that those wishing to take him off cannot do so so long as the Lord wishes to keep him here, which, he says, may be for a long time. The least religious discourse throws him into a state of nervous excitement, & he seemed possessed until recently with the idea that he had committed the unpardonable sin.

32 question. Does he think now that he has committed the unpardonable sin?

Answer. A few weeks ago he was baptized. Since that time he does not mention the unpardonable sin, but is confirmed in the belief that the Lord is with him in all he says and does, frequently mentioning the name of the Lord, and says that the Lord is taking him by the hand and will bring him through this business, & that he trusts all to the Lord & does not worry any more about it, & that the Lord can cure him of his disease, which is a hopeless one.

33 question. Does he believe that he is under the protection of special providence in his present trouble?

203 Answer. He does. When interrogated as to his health he says each day that he is better than he was the day before, saying each time it is by the grace of God & that God is with him, especially in this matter with Hoffman, Lee & Co.

34 question. Have you ever heard him say that he had taken a stand about this matter with Hoffman, Lee & Co., which was or is intended for the good of the world, & that it was the boldest stand that had been taken since the time of Christ, or something of that sort?

Answer. I don't recollect anything of that kind. He did say that in the time of Christ they considered St. Paul mad, and compared himself to St. Paul. He said that he had committed this case to the Lord and wasn't going to trouble himself about it any more.

35 question. Are these conversations on religion frequent or seldom, & in holding them does he discriminate in persons?

Answer. The conversations are quite frequent & he will talk with anybody on the subject.

204 36th question. Are his views on that subject considered by yourself & others generally as extravagant and irrational?

Note.—This question is objected to by plaintiffs' counsel as illegal.

Answer. The whole tenor of his conversation on religious subjects have been extravagant and at times irrational.

37th question. Has he shown any other mental delusion?

Answer. He has. He is possessed with the idea that interested parties wish his destruction. He suspected a gentleman visiting the springs a few days ago with being a detective because the party in question asked him how the waters were agreeing with him. He subsequently said to me that there were parties who wished to get rid of him. I endeavored to convince him of the folly of saying so. He replied that he knew all about it & that there was no use in talking to him. At first he seemed rather incensed at the idea of being considered insane, but now treats it as a joke and laughs at it, considering them insane who consider him so, and takes

205 frequent occasions to assert his sanity more than ever before.

38th question. At what date did this mental delusion appear?

Answer. Since the 22nd day of August this mental condition has developed.

39th question. At what date did this delusion on the subject of religion appear?

Answer. The religious symptoms have been prominent in his case since 1884. The delusion in regard to the Lord taking care of him in this case has been developed within the last six weeks—about the 25th of July last.

40th quest. Is it your opinion that Millner should be placed in an asylum?

Answer. It would be better for Mr. Millner if he were in an asylum where he could be taken care of, but I do not consider his case a dangerous one. At times he is apparently sane to the casual observer, and although mentally insane is possessed of great shrewdness and cunning, which would be mistaken for insanity by those not informed.

41st quest. Do you think he should have been confined in an asylum since the 25th of July last or about?

206 Answer. It would have — better for him.

42 quest. Have you seen much of the insane?

Answer. I have seen as much as the ordinary general practitioner and more than a great many of them.

43 quest. In your opinion, are his habits, manners, conduct, & deportment those of an insane man?

Answer. They are.

44 quest. Where were you educated for your profession? Have you ever been awarded any certificate of distinction in it? If so, when & where?

Answer. I commenced my medical studies at the university in Paris, France; served on the medical staff of the French army during the Franco-Prussian war, received therefor a special diploma and decoration of the Bronze Cross of Geneva; graduated subsequently at the University of Leipsic, Germany; received certificates from the Universities of Berlin and London (King's College); held the position of surgeon of anatomy in the Baltimore Medical College and member of several learned societies. My expeience

207 with the insane has been considerable and varied, both in State and private practice, but I never was connected with an insane asylum.

Re-examination in reply by plaintiffs' counsel:

1st question. Why did you not attend the conference between Hoffman and Millner when asked to do so by Mr. Hoffman?

Answer. Mr. Hoffman asked me to go down and stay there, unless Mr. Millner objected to my presence. I went down. Mr. Millner objected & I withdrew.

2 question. What did Mr. Millner say by way of objection?

Answer. Mr. Hoffman asked Mr. Millner if he objected to my presence, and Mr. Millner said it was not necessary, but gave no other reasons.

3 question by same. When, for the first time, did you form and express the opinion that Millner should be put in an insane asylum?

Answer. Since about the 22 August I have been of the opinion that he would be better off in an asylum. I don't recollect expressing that opinion until to-day.

208 4th question. State any other facts than thoes already given which have led you to this conclusion.

Answer. His nervous manner and his nervous starts & twitches and the wild expression of his eyes.

5th quest. Examine again Exhibit "Boyland No. 5" and state if it does not predict that he was likely to become insane in 30 days unless this business was settled.

Answer. The statement in the letter is as follows: "I would not answer for his sanity 30 days if this state of affairs continues," which does not actually predict insanity, but asserts it as a possi-

bility in that time. There has been an unsoundness all along, but such unsoundness was not incompatible with the capability of arranging this business at the time referred to in the professional opinion cited, the unsoundness not amounting at that time to insanity; that it was a cereb-al *p*athological rather than a psychical unsoundness.

6th question. You have stated that Millner speaks to any & every body about these religious delusions. Does he speak equally
209 freely and fully about his debt to the plaintiffs and business transactions?

Answer. While not speaking as freely about his business with Hoffman, Lee & Co. as he does about his religious delusions, I believe he did have, prior to July 25th, conversations with outside parties about the matter, but has been exceedingly guarded since then.

7th question. Whenever he has spoken to you of his transactions with Hoffman, Lee & Co., past and present, has he seemed to be sane or insane upon this subject—spoken rationally or irrationally as to the same?

Answer. He has not spoken to me recently upon the subject, but whenever he has spoken about it he seemed to know what he wanted—although he spoke with considerable effort, many circumlocutions and repetitions—and was to that extent rational.

And further deponent saith not.

G. HALSTEAD BOYLAND, M. D.

210 STATE OF VIRGINIA, *County of Mecklenburg,* } *To wit:*

I, William T. Atkins, a notary public in and for the said county and State, do hereby certify that the foregoing deposition of Dr. G. Halstead Boyland, taken to be read as evidence in the suit pending in the circuit court of the United States for the western district of Virginia, at Danville, wherein Hoffman, Lee & Co. are plaintiffs and James R. Millner & others are d'f'ts, was taken, subscribed, and sworn to before me, and is now certified to said court, no other witness being produced for examination.

Given under my hand this 14th day of September, A. D. 1885.

WM. T. ATKINS,
Notary Public.

Fee, $25.00, paid by pl'ffs.
W. T. A., *N. P.*

The foregoing deposition was endorsed as follows: Hoffman, Lee & Co. *vs.* Jas. R. Millner, &c. Deposition of Dr. G. Halstead Boyland for pl'ffs. Opened Sept. 29, 1885, by consent of both parties, by counsel, in writing, filed with the case. Chas. Martin, clerk. Filed Sept. 17, 1885. Chas. Martin, clerk.

211 The following exhibits were filed with the foregoing deposition of Dr. Boyland, and are marked Exhibits "Boyland

No. 4, 5, 6, & 7," and said exhibits are in the words and figures following, to wit:

"EXHIBIT BOYLAND No. 4."

JUNE 15, '85.

Dr. G. Halstead Boyland, Buffalo Lithia Springs, Mecklenburg Co., Va.

DEAR HALSTEAD: I arrived at home all right Saturday thoroughly worn out, & do not feel in much better plight at this writing, as I have been over head & ears in this Millner business all yesterday & to-day. My sympathies & feelings were so worked on by Millner's exhibitions of remorse that I offered a most favorable compromise of our large claim, which I certainly would not have done out of consideration for his wife and relations, who were cognizant of & some of them parties to & abbettors of the fraud, all the particulars of which he confessed to me. I fear his improvement will be retarded when he knows that we were forced by his counsel to bring suit. He authorized
212 Mr. Harrison to see Mr. Peatross, his counsel, & to express to him his wishes to settle the matter by compromise & to get him to go to Buffalo & to see him with that view, as he could not carry it out without his assistance. Mr. Harrison did see Mr. Peatross, who declined to go to see Millner, said he was crazy, & that he would countinance no settlement. Confidentially, I believe that "they all" (his brother & wife) are trying to confine him in a lunatic asylum with a view to prevent any such settlement & to get the control of his property. Of Peatross, his legal adviser & spiritual dictator, I will say nothing. Now, as the money he stole from us 13 years ago (he confesses to having taken $12,000 in gold & greenbacks) was the foundation upon which he built up his present fortune, I could not consult his present condition, as the delay he asks for means giving time to his wary advisers to make way with said property, so in self-defence, under legal counsel, we were forced to sue at once. His fraud, viz., withholding the $12,000, he has freely confessed to Harrison & myself.
213 If he has confessed it to you or does confess it please let Hoffman, Lee & Co. know it. We would also like to have your professional opinion upon his state of mind—*i. e.*, his mental capacity to understand the full force of what he says or confesses. It is so evident to me that a sinister conspiracy is being hatched to prove his inability & defeat justice that I want to be fortified with all honest testimony within reach. Give my best love to Ellen; she knows how much I regretted my inability to be more with her. Give Florence a kiss from the "uncle" who "writes her letters."

With thanks for all your kindness, I am faithfully yours,

ROBERT G. HOFFMAN.

If I have scrawled unintelligently, put it down to an exhausted mind & body—my mind is in a legal "fog." R. G. H.

214 19 JUNE, 1885.

Dr. G. Halstead Boyland, Buffalo Lithia, Va.

DEAR SIR: We beg to acknowledge rec't of your letter of 17th, giving your professional opinion of Jas. R. Millner- mental & physical condition.

It confirms our view that a man could not be otherwise than in full possession of his mental faculties who would wish to acknowledge a wrong done to persons who were so uniformly kind and considerate to him during our business intercourse.

It also confirms our Mr. Hoffman's opinion gained through his interview with him at Buffalo Lithia Springs.

Thanking you for courtesy to Mr. H. while at Buffalo Lithia,

Y'rs entirely, HOFFMAN, LEE & CO.

JUNE 23, '85.

Dr. G. Halstead Boyland, Buffalo Lithia Springs, Va.

MY DEAR DR.: I have your letter of 21st, written at in-
215 stance of Jas. R. Millner, to whom I wrote explaining why Hoffman, Lee & Co. had been forced to the suit. I have worked very hard to bring about a compromise, for I pity him from my heart. I will make another strenuous effort to effect a compromise if my own ingenuity & that of my lawyers can do so legally—that is, to make it legal & binding on both sides, without which any settlement would be waste paper.

I will at once exhaust every effort to make our pecuniary interest succumb to the happiness of a man who I believe is sincerely penitent. More I cannot do. I will report to you every success or failure.

Yours sincerely, ROBERT G. HOFFMAN.

P. S.—There is no use in Millner's — whilst every effort will be made to gratify — of a compromise.

216 JUNE 23, '85.

Dr G. Halstead Boyland, Buffalo Lithia Springs, Mecklenburg Co., Va.

MY DEAR HALSTEAD: I read with deep feeling your letter of 21st inst. I have certainly given ample evidence of a willingness to sacrifice pecuniary interest to our compassion & sympathy for Millner. His friends deny his ability to make a contract & will attack it. I will make one more effort to bring about a compromise, although all our lawyers agree in the opinion that our case is as nearly impregnable as possible, even should he get strong testimony as to their plea, insanity. I feel deeply for the poor man. We are not deaf to Millner's appeals for mercy, as we have assuredly shown. Why does he appeal sorely to us? He must have the co-operation of his own wife's household & real friends. Are they indifferent to his happiness & well-being? Has he made any or the proper kind of appeal to them? Do they know the serious effect
217 this suit may entail upon him & their own future? I enclose a brief letter, which, if your discretion so dictates, you

are at liberty to show to Millner, if you think it will give him comfort or ease of mind.

Yours very truly, ROB'T G. HOFFMAN.

P. S.—It further occurs to me to suggest, as you are evidently interested in M., not only from motives of humanity, but also as a patient of long standing, why do you not write to Mr. R. W. Peatross the result of your own observations as to the disastrous effects which the obstruction to his wishes for a prompt settlement of this business is having upon his health & what may be its probable consequences, & anything which may awaken him & Millner's family as to these facts. This, in our opinion, is the only practical source from which the desired result can come or emanate. Under their claim of imbecility our hands are tied as to a legal settlement without their sanction, and this would have to be approved by
218 our lawyers. If Millner knows that this step would be taken, would it not tend to soothe & arrest the relapse you fear, pending the negotiations which may follow? I can think of nothing else to suggest in Millner's behalf. I hope you, Col. Goode, or other kind friends may discover some plan to alleviate his suffering & attain his object.

Very sincerely yours, ROBERT G. HOFFMAN.

JUNE 29, '85.

MY DEAR HALSTEAD: We received to-day a letter from our lawyers saying, "Peatross declines to go to springs; won't countenance any compromise, & has so written Goode." This for the time being stops all friendly measures, & any further overtures in that direction must come from Millner's friends after suit has been brought. I could not resist writing Col. Goode placing our position before him, as I valued too highly the good opinion of one who is consid-
219 ered a humane & Christian gentleman. It is difficult for any one who is not conversant with all the details of the strength of our case & the fraudulent involvement of others in it to appreciate how entirely we are guided in offering to accept the compromise proposed by humane motives. Even if — sh'ld loose the case by any legal technicalities or injustice, it seems almost a question of duty that the frauds should be exposed. Except for poor M., I wouldn't trouble you further. Love to all.

Y'rs truly, ROBERT G. HOFFMAN.

The foregoing letters were endorsed as follows, to wit: Hoffman, Lee & Co. to Dr. Boyland. Dates, June 15, 19, 23, 23 (No. 2), 29, 1885. Exhibit "Boyland No. 4," being letters of pl'ff to witness dated June 15, June 19, June 22nd, June 23, & June 29th. Filed with the deposition of Dr. G. Halstead Boyland. W. T. A., N. P. Filed Sept. 17th, 1885. Charles Martin, clerk.

220 The following letter was filed with Dr. Boyland's deposition & marked Exhibit "Boyland No. 5;" which said exhibit is in the words & figures following, to wit:

"BOYLAND 5."

BUFFALO LITHIA SPRINGS, VA., *June 21st*, 1885.

Rob't G. Hoffman, Esq., Baltimore, Md.

MY DEAR ROBERT: Your favor of the 19th received. Mr. Millner desires me to make a final appeal to you *to you* in this matter. He has worried so much about it since he ascertained that you—*i. e.*, Hoffman, Lee & Co.—had determined to sue that he is growing rapidly worse & is in a fair way to become actually insane. I would not answer for his sanity thirty days if this state of things continues. He has a wife & family, as you know, & is much distressed about them. I believe this business will kill him unless settled at once, & I think you would be doing the act of — Christian man to come here at once & settle with him.

221 & 222 He would like to have & thinks he ought to have $6,000 for his place in Danville, paying you the balance in cash; but if Hoffman, Lee & Co. will not do that he accepts the terms you made when here—$5,500 and the balance, $2,200, in cash. I tell you as your friend that I am advised by a gentleman & friend, a prominent legal authority, that the testimony as regards Millner's mental condition will be very conflicting if the case comes to trial, and he will most likely be a maniac by fall if he knows there is to be a trial. It is also doubtful if you can gain your suit. This gentleman thinks you would act wisely, & so do I, if you would compromise—act in your interest—to say nothing of prolonging a human life to perhaps be still of some benefit to his wife & little ones. If you will come & bring counsel he assures Col. Goode & myself that he will settle with you. You can bring Judge Green or Mr. Harrison or some one from Baltimore, or, if you will telegraph me, Col. Goode will have local counsel & a notary here.

223 I think from a monetary point of view, for your own interest, from the standpoint of Christian charity, and from every point from which you look at it, you ought to come & come while there is yet time—while he is still able to settle. The impression that he is insane is very strong with the general public & some of his doctors.

I now leave the matter for your final action. I think by applying the golden rule to this case you will be laying up for yourself treasure where n-ither morth nor rust doth corrupt.

Yours affectionately, G. HALSTED BOYLAND.

Mr. Henry Taylor & Mr. Renshaw here. Mr. Millner gives assurance that he will make a settlement himself with you without reference to counsel. He will arrange without counsel if you prefer. Mr. Peatross, I understand, he will not allow to advise him in this matter.

I know t[illegible] your generous nature will not let you turn a deaf ear to the poor fellow in this his great & probably his
224 last struggle for the right.

The foregoing letter exhibit was endorsed as follows, to wit: "Boyland No. 5" with deposition of G. Halstead Boyland. W. T. A., N. P. Filed Sept. 17th, 1885. Chas. Martin, clerk.

The following letters were filed with Dr. Boyland's deposition & marked Exhibit "Boyland No. 6;" which said exhibit is as follows, to wit:

Copy.

G. H. Boyland to R. G. H.

BUFFALO LITHIA SPRINGS, *June* 17, '85.

Rob't G. Hoffman, Esq., Baltimore.

MY DEAR ROBERT: Your favor of 15th inst. rec'd. Since you left Mr. Millner has told me verbally that he had $12,000.00 at the time the transaction you refer to took place. He evidently intends to make restitution on the basis you have talked about & asked me a hypothetical question as to what a man holding back money
225 at a settlement should do. I replied, "Make restitution." The next day he showed me a letter from his counsel in Danville advising him that Hoffman, Lee & Co. were investigating with a view to bringing suit, telling him to be guarded in any interview with them or their counsel should they perchance come to the springs & warning him not to sign anything. Mr. Millner then remarked that he did not care about that & the same afternoon came to my office & requested me to write at his dictation the letter that was mailed to you on Monday last, 15th inst., & which you probably have now. He is not so well yesterday & to-day, owing, I think, to the extreme heat & a little diarrhœa, but his mental condition is as described in the professional opinion enclosed. I rec'd on the 15th inst. a letter from Mr. Harrison & in accordance with his request got from Col. Goode, a lawyer of distinction, his opinion that Mr. Millner's talk & contin-ous purpose to settle was not compatible with insanity. He did not regard him insane from his stand-
226 point—a legal one. I — you the sum & substance of what has taken place, but cannot always recall exact words, as you very readily understand from the number of conversations & communications of different kinds that I have had in the matters.

Ellen sends love & Florence a kiss, with kind regards.

Yours very truly, G. HALSTED BOYLAND.

Copy.

JUNE 25, '85.

Robert G. Hoffman, Baltimore.

MY DEAR ROBERT: Your favor of the 23rd inst. received. Col. Goode is arranging for Mr. Millner to get Mr. Peatross here & to have the matter settled to your satisfaction. If you intend to accept the compromise—$6,000 or $5,500 for place & balance in cash—will you name a day sufficiently far ahead so that Mr. Peatross can be here and meet you & Judge Green or whoever you may bring as
227 counsel, or, in case it cannot be compromised, we can write you in time not to come. In the meantime Col. Goode will

try & get Mr. Peatross & I also will enclose a note to him if necessary. I am writing, as usual, at Millner'- request. He thinks you ought to telegraph Judge Green to see Peatross and come with him to meet you & your counsel here, if possible, on Monday next.

Yours very truly,

(Signed) G. HALSTED BOYLAND.

BUFFALO LITHIA SPRINGS, *July 3rd*, '85.

Robert G. Hoffman, Esq., Baltimore, Md.

MY DEAR ROBERT: Millner desires to say through me that he has written Mr. Peatross an autograph letter dismissing him as counsel. On the same day he wrote, through me, to Judge Aiken requesting him to be his counsel & notifying him of Peatross' dismissal. Will you meet or send a represen-ative to meet Judge Aiken, if he consents to take the case & settle finally here?

228 He will notify you duly. If this fails he intends to get the court, if possible, to ratify a deed & papers in settlement of your claim. He says his wife will sign them. He wants to know whether you intend to allow him $5,500 or $6,000 for his place in Danville. He thinks you ought to allow him $6,000 under the circumstances. He does not want the matter to go to court, & says if, after having made every honest effort to settle with you & tried every means in his power, he is prevented from so doing by others that you ought not to press the claim to trial, but let the whole matter drop, as it is a question of life & death with him, also involving the future means of his wife & children.

Your three letters reached me, & I can say I sympathize with you, at least in the bother & vexation attending this business. You may imagine what conversations, understandings, interviews, conferences with Col. Goode & Millner, letters to counsel, notes, memoranda, just-a-word-with-you, &c., I have been through. However, if it will only do some good, I am perfectly satisfied.

229 Yours very sincerely,

(Signed) G. HALSTEAD BOYLAND.

Copy.

BUFFALO SPRINGS, *July* 5, '85.

Robert G. Hoffman, Esq.

DEAR ROBERT: Judge Aiken, by letter, agreed to take Millner's case, & so wrote this a. m. Peatross also wrote, retiring from the case, & Judge Aiken has been notified of that & now stands ready to meet you at your own time here. Millner's wife, he avers, will sign the deed. I do not see anything more to do except to draw the papers & settle & give the poor fellow's mind a rest & his body a chance to improve, and so prolong his life.

Yours very truly,

(Signed) G. HALSTEAD BOYLAND.

If you will not allow $6,000 for place he will take $5,500; balance cash.

B.

Copy of Letter from Dr. G. H. Boyland.

BUFFALO LITHIA, *July* 13, '85.

230 R. G. Hoffman.

MY DEAR ROBERT: Your favor of 10th rec'd. You have not troubled me at all. I only meant to refer pleasantly to Millner's circumlocutions & repetitions, of which you had a specimen the day you were here.

Col. Goode has now written, at M.'s request, to Judge Aiken requesting him to communicate with your counsel in Danville, & both seem confident that the matter can be settled. I hope it may be so.

Yours very sincerely,

(Signed) G. HALSTEAD BOYLAND.

The foregoing letters were endorsed as follows, to wit: Exhibit "Boyland No. 6," being letters from G. H. Boyland to R. G. Hoffman, filed with deposition of G. Halstead Boyland. W. T. A.,N. P. Filed Sept. 17th, 1885. Charles Martin, clerk.

231 The following letter was filed with Dr. Boyland's deposition & was marked Exhibit "Boyland No. 7," and is as follows, to wit:

BUFFALO LITHIA SPRINGS, VA., *July* 1*st*, 1885.

Hon. Judge Aiken.

MY DEAR SIR: Mr. Jas. R. Millner, of Danville, a patient of mine, is anxious to make a settlement of claim with Hoffman, Lee & Co., of Baltimore, which Mr. Peatross refuses to entertain. Mr. Millner, therefore, requested me to inform you hereby that Mr. Peatross is no longer his counsel, & requests you to act for him in this matter. I am writing at Mr. Millner's earnest solicitation, & believe that the speedy settlement of this trouble will conduce to his improvement in health. It is now praying upon his mind & endangering his mental condition, as well as retarding his general progress. There is some cereb-al irritability in his case, due to sympathy with his disease—chronic Bright's disease—but he is
232 sane & perfectly able to adjust this business, knowing exactly what he wants, & takin- a very intelligent view of the case. He takes exercise regularly, has a good appetite, and is certainly *compos mentis*. Nevertheless he is worrying himself to death, & the only relief for him is the settlement of this affair. Hoffman, Lee & Co. will, I understand, accept the proposition, & the only thing wanting is for Mr. Millner to execute his papers legally to the satisfaction of Hoffman, Lee & Co. It is really a case of humanity, & if the transaction is not done soon I would not answer for his reason, & am convinced that the worry, coupled with the anxiety to provide for his family, will hasten his death, which would in that case probably not long be delayed. I repeat that I am writing at Mr. Millner's request, desire, & earnest solicitations only, &, as his physician, in the interest of humanity, as his signature will attest.

Yours very truly, G. HALSTEAD BOYLAND.

Judge Aiken.

Please come & see me at once.

Yours truly, JAMES R. MILLNER.

Will you, if telegraphed for at a given day, come to meet Hoffman, Lee & Co. or there representatives at this place?

G. H. B.

Endorsed: "Boyland No. 7." Filed Sept. 17, '85. C. Martin, clerk.

233 And on another day, to wit, on the 18th day of September, A. D. 1885, the following deposition of Thos. F. Goode for defendants *were* filed; and said deposition is in the words and figures following, to wit:

The depositions of Thos. F. Goode, taken at Buffalo Lithia Springs, in the county of Mecklenburg, Va., by consent of parties, by counsel, which consent is shown by the signatures of the parties, by counsel, hereto annexed, before me, Chas. T. Beekes, a notary public in and for the said county of Mecklenburg, this 15th day of August, 1885, to be read as evidence in behalf of the defendants in a certain suit in chancery pending in the circuit court of the United States for the western district of Virginia, at Danville, Va., wherein Hoffman, Lee & Co. are pl'ff- and Jas. R. Millner & others are defendants.

We consent to these depositions being taken without formal notice of the same.

HOFFMAN, LEE & CO.,
By BERKELY & HARRISON, *Counsel.*

234 Present: A. M. Aiken, att'y & counsel for defendant-.
Present: James P. Harrison, att'y & counssl for pl'ffs.

The witness, THOS. F. GOODE, being duly sworn upon the Holy Evangelist of Almighty God the truth to speak touching the matter in controversy between the parties to this suit, testifies and says:

Examined by defendants' counsel:

1 Question. Please state your place of residence & your profession.

Ans. My residence is at Buffalo Lithia Springs, in the county of Mecklenburg, Va., and my profession is that of a lawyer.

2 by same. State how long you have been a member of the bar, & whether you are the proprietor of the Buffalo Lithia Springs.

Ans. I have been a member of the bar some thirty-five years and am the proprietor of the Buffalo Lithia Springs.

3 by same. Do you know James R. Millner, one of the de-
235 fendants to this suit? &, if yea, state how long you have known him & the circumstances under which you became acquainted with him.

Ans. I do. He arrived at this place as a guest, I find by refer-

ence to my register, on the 28th day of August, 1884, and remained here for some six weeks.

4 by same. For what purpose did he come to the springs?

Answer. To use the water for the benefit of his health.

5 by same. Will you state the condition of his health at that time, as you understood it, & his general deportment, conduct, appearance, & habits during his residence at the springs that year?

Ans. Upon arrival at the springs his mind was evidently very much disordered and his physical condition very feeble, so much so that I regarded his situation a very critical one. For both of the reasons mentioned I was unwilling to have him at the springs save under the charge of some friend. I objected positively to
236 his being left here by a young man who accompanied him. Finding that I could not retain him I exacted from this young man a promise that he would, immediately upon his return home, see Dr. Trotter, who was at that time one of Millner's physicians, or Millner's brother, and to represent that I was unwilling to have him here without some friend to watch over him. I also wrote immediately to one of these parties by mail—I think to Dr. Trotter, but I am not certain—stating that I was unwilling to have the responsibility of Mr. Millner at the place without some friend and urging that some one be sent immediately to him. For the first few weeks of his stay at the springs (in 1884) he seemed to be laboring under very unnatural mental excitement and was exceedingly restless, promenading the lawn almost constantly. After a few weeks' use of the water, however, his general health seemed greatly improved, and with the improvement of his health, which was then continuous during his stay at the springs, there was
237 a gradual subsidence of the unnatural mental excitement to which I have referred, and the restlessness also of which I have spoken gradually disappeared and his deportment became very decidedly more calm, while there was during his entire stay something in his conversation & bearing that indicated unnatural mental condition. He left the springs, after a stay of some six or seven weeks, in a comparatively comfortable condition of both body and of mind.

6 by same. Was there anything about his personal appearance that attracted the attention of observers generally? &, if so, state what impression his appearance & conduct made upon the general observer.

NOTE.—Pl'ffs, by counsel, object to this question so far as it calls for the impression of others than the witness, which is hearsay and pure opp-ion.—Chas. T. R., N. P.

Ans. There was an unnatural, wild expression about the eye that indicated to me that he was suffering from some mental aber-
238 ration. Apart from this the facts which I have already stated, that he was almost continuously in motion, rarely taking a seat, and that for a very short time, attracted the attention and excited the comment of visitors generally at the springs, and it was

often remarked by them in my presence that there was something wrong about his mental condition.

NOTE.—Answer objected to by pl'ffs, by counsel, so far as it stated hearsay.

7 by same. Did you have frequent interviews or conversations with him during his stay at the springs in 1884? &, if so, state whether or not there was any special subject or theme upon which he preferred to dwell.

Ans. I had frequent conversations with him during his stay. The subject upon which he always conversed and from which he could not be led off was the state of his health and the probability of his recovery. I now recall no other subject upon which he seemed especially disposed to converse.

239 8 by same. Do you remember whether his mind brooded upon religion or his soul's salvation during that visit?

NOTE.—Objected to as leading & suggestive.

Ans. In no conversation with me did he mention the subject of religion, nor did I ever hear him refer to it in conversation with others.

9 by same. Did James R. Millner return to the Lithia Springs in 1885; &, if so, at what time, & is he here at present?

Ans. He returned to the springs, I find by reference to the hotel register, on the 22nd day of May of the present year and he is still here.

10 by same. Will you state the condition of his health at the time of his arrival here last May, as it appeared to you, what it has been since, & his general appearance, deportment, conduct, & habits during the period of his residence?

Ans. His condition, both physical and mental, as it appeared to me, was almost identically what I described it to be upon his
240 arrival in August, 1884, though there was somewhat less aggravation of his general symptons. After a few weeks' use of the water he showed a very slow improvement, both as to his bodily health and his mental condition, becoming much stronger physically and mentally calmer and more coherent; since both his physical and mental condition have, in my judgment, undergone some changes during his present stay at the springs. Towards the lat-er part of June, I think it was, though I cannot undertake to be accurate as to the time—possibly it may have been as early as the middle of June—I first learned from him that he was greatly distressed upon the subject of religion. From this time, for several weeks afterwards, it was his constant theme, and he talked with me a number of times each day upon this subject, often inviting me to his own room, often coming himself to my private office, & frequently stopping me on the lawn as I would be passing on business.

Some time afterwards—I can't say just how long—he in-
241 formed me that the way of his soul's salvation had been made plain to him, and from that time for some several weeks the improvement in *he* mental condition was very marked, so much so

that he seemed to me to understand himself perfectly clearly and to be, I thought, quite rational. This state of things continued until a notice was served upon him for the taking of the depositions of Dr. Boyland and myself at this place. I cannot recall the date of the service of the notice. Since referring to the return upon the notice I find it was on the 14th day of August. The service of this notice made a very great impression upon him. When he came—which he did—to inform me of the service he seemed to have undergone an entire change from the time I had seen him a few hours before. His face was greatly flushed and he was almost wild with excitement. He commenced at once to tell me that he had no answer whatever about the matter; that he believed that God was leading him by the right hand,
242 and that he had given it all up to him, satisfied that he would take — of him in this suit as well as in all other respects. From that time I observed the restlessness about him that I have described as characterizing him the first few weeks of his visit in 1884. He was almost constantly upon his feet, moving from place to place upon the lawn, and talking with every one whose attention he could command upon the subject of religion and his controversy with Hoffman, Lee & Co. He talked each day a number of times with me, often for several successive hours at a time. He would seek an interview with me at intervals of a few minutes, and so far was this carried that it became a very serious annoyance to me in the transaction of my business affairs. I feel safe in saying that from the date of the service of the notice referred to there was a perceptible change each day for the worse in his mental condition until the 20th day of August, I think it was, when he came
243 to me and informed me that he was satisfied that Hoffman, Lee & Co. had an agent here for the purpose of assassinating him, and requested me to have some special guard kept over him and his room. At first his suspicions in this regard seemed to be directed to a few individuals, but after a few days he became suspicious of the guests at the springs generally.

11th Question. What was the state of his health from the 1st to the middle of June, 1885?

We consent for Judge Aiken to act as amanuensis of the notary in writing following answers to relieve the notary.

HOFFMAN, LEE & CO.,
By JAS. P. HARRISON.

Ans. From the 1st to about the middle of June I think his condition in all respects was about such as I represented it to be on the 22d of May.

12th Question. Were his conversations on the subject of religion, in your judgment, extravagant & irrational or not?

Counsel for plaintiffs object to this question as illegal. The
244 witness should state the conversation, what Millner said, his opinion as to the extravagance, &c., *of* the same cannot be evidence.

Ans. I regarded his conversations on the subject of religion as extravagant & irrational.

(This answer is objected to for same reason.)

13th Question. Can you detail any special conversation he has had on that subject?

Ans. I cannot detail any special conversation he has had on that subject, further than to say that he has frequently represented to me that God was specially guiding & directing him & probably for some special purpose. He has frequently intimated to me that God purposed through him to unravel a great mass of fraud which he claimed Hoffman, Lee & Co. had perpetrated upon a number of people in the county of Pittsylvania.

14th Question. Can you mention any special delusion under which Millner has been laboring since he has been here this summer?

245 Ans. Only that which I have already stated, that Hoffman, Lee & Co. had agents here from time to time for the purpose of assassinating him. I will add that a few weeks before showing the delusion referred to that he expressed to me the apprehension that there was a conspiracy among persons in his own neighborhood to take his life, and mentioned especially a Dr. James was the more probably selected for the accomplishment of this object. I think he regarded his brother as in some way connected with the conspiracy.

15th Question. Do you recollect his calling your attention to a negro about the grounds?

(Objected to as suggestive.)

Ans. I do.

16th. Will you state the circumstances under which it was done?

Ans. He called in my office about the 20th of August & described a negro to me & asked me if I knew what he was doing here. I told him that I did not recognize the negro from his discription.

He then expressed to me the apprehension that the negro he
246 described was here in the employment of Hoffman, Lee & Co., sent here by them for the purpose of assassinating him, & requested me to keep a special watch over him & his room & to instruct the manager to do the same.

17th. Do you remember his calling your attention to a person, who he described as an Irishman, about the grounds?

(Objected to as leading.)

Ans. I do. About half an hour after the conversation referred to about the negro, when walking to Spring No. 2, I was called to by Mr. Millner, who came up and told me that there was an Irishman here from New York, who was evidently keeping a watch upon him and who w[illegible]nt here by Hoffman, Lee & Co. to assassinate him.

18th. In point of fact was there any such negro or Irishman here?

Ans. The negro he described was here as the servant of a guest.

The gentleman who he took to be an Irishman from New York turned out to be a visator from North Carolina.

19th. Did a Catholic priest conduct religious services here
247 at any time during the summer?

Ans. He did.

20th. Did Millner ask you any questions about him? If yea, what?

Ans. The day after the services by the Catholic priest Mr. Millner visited me in my private office. He was greatly excited and agitated and said to me, "You had services here yesterday by a Catholic priest; was there ever such a thing here before?" I told him, no. He then said he understood the whole matter; that Lee, of the firm of Hoffman, Lee & Co., was a Catholic, and that this priest was evidently here to aid in his taking off, adding that Hoffman, Lee & Co. greatly feared him, as they thought he might be instrumental in exposing the great frauds which they had perpetrated upon the people of Pittsylvania, & said, I think, that it was very probable that God proposed to use him in bringing about that exposure.

21st Question. What is you opinion of Mr. Millner's mental condition?

248 (Objected to until it is established that this witness is qualified to express an opi'on on this subject. The witness should be asked facts and circumstances, & a proper expert should be called to give the opinion.)

Ans. I regard him as undoubtedly an insane man.

(Ans. objected to.)

22nd Question. In your judgment, is he capable of making and binding himself by contracts?

(Question objected for same reasons.)

Ans. I think most certainly that he is not.

23rd Question. Have you formed this opinion from your experience with and observation of Millner as you have detailed in your answers above?

Ans. I have.

Cross-examination by Mr. HARRISON:

1st Question. Is not the wild expression of the eye & the restlessness spoken of in your ex.-in-chief incident to Millner's disease?

249 Ans. I am under the impression that there is a certain unnatural expression of the eye incident to Bright's disease in its later stages. I am not aware that restlessness is an incident.

2 by same. Is not the disposition to talk frequently about one's physical condition and chances of recovery common in this disease?

Ans. I think it is.

3 by same. Has not Millner been left while here to sleep alone in his room, to go unattended and unwatched, just as other patients?

Ans. He has.

4 by same. When the notice of depositions taken yesterday was brought to you by Millner did he not seem to understand the meaning and object of the same?

Ans. I did not think that he did very clearly.

5 by same. Please state when he brought this notice to you and as nearly as you can what he said at the time.

250 Ans. I cannot undertake to give Mr. Millner's language. The impression made upon me by what he said was that he had come to me to read the paper and explain the matter to him.

6 by same. Did you do so and did he seem to comprehend?

Ans. I did explain the nature of the paper to him and he seemed to comprehend it.

7 by same. When did Millner first speak to you of his business with Hoffman, Lee & Co.?

Ans. On the evening of the day or, possibly, the day after his interview with Mr. Hoffman.

8 by same. Up to that time had you been in the habit of conversing with him frequently?

Ans. I had.

9 by same. Had he up to that time ever spoken to you or intimated to you that he had wronged the pl'ffs or said anything on the subject?

251 NOTE.—This and all subsequent questions to this witness designed to elicit any statement, admission, or confession of the defendant, James R. Millner, upon the subject of a fraud or wrong practiced upon Hoffman, Lee & Co. or concerning any allegation or statement of the complainants' bill are objected to by the counsel for the defendants, 1st, because the said defendant, James R. Millner, was before & at the time of making any statement, confession, or admission upon said subjects & is now an insane man & incapable of binding others or himself by any statement, admission, or confession; 2nd, because this and all questions to the same end are foreign to any point of the examination-in-chief.

In reply counsel for pl'ffs states that he proposes to prove that at the time of such conversations the witness deemed the defendant sane on this subject and capable of transacting this business; secondly, that the questions will show that the defendant was sane when the ex.-in-chief sought to show the reverse.

252 It is agreed that the above objection need not be repeated after subsequent questions in order to have the same application when desired.

Answer. He had not.

10 by same. Please state when first he spoke to you on the subject, and what he then said.

Ans. Late in the evening of the day on which the interview between Millner & Hoffman occurred—or on the succeeding day; I am not certain which—Mr. Millner told me of the interview; stated what had passed between them and what led to it. He stated that some years ago he himself, or possibly some firm of which he was a

member, had made various consignments of tobacco to Hoffman, Lee & Co., as commission merchants; that the business had resulted disastrously, and that he or his firm had been brought considerably in debt to Hoffman, Lee & Co.; that a compromise of the indebtedness to these parties had been affected with them; that in representing to them the property which was the basis of the compro-
253 mise he withheld from them a knowledge of the fact that he had at the time $12,000.00 in money, and that he wanted to reopen the matter and place them substantially (I don't pretend to give his language, but simply to state substantially his ideas) where they would be if he had made known to them at the time of making the compromise that he had the $12,000.00. He also stated that Hoffman, Lee & Co. had defrauded him or his consern out of a large amount of money, and that he was satisfied a fair settlement between them would show them indebted to him $75,000.00.

11 by same. What did he say had passed between Hoffman and himself in said interview?

Ans. He stated that he had proffered to Mr. Hoffman a compromise of the question between them growing out of the concealment at the time of the original compromise of the fact that he possessed this $12,000.00 in money; that he had proposed to him to convey to his firm a house & lot which he, Millner, owned in the town
254 of Danville. I think he stated that he proposed to value the house at $7,000.00 or $7,500.00, but I am not certain as to the figures, and, in addition to this house and lot, that he proposed to pay some $1,000.00, or possibly $2,000.00, in money. I am not certain which of these two amounts it was. This proposition, however, he stated, was made subject to the approval of Mr. Peatross, one of his counsels in Danville, and that the matter was deferred to await the result of Mr. Peatross' views about the propriety of the matter.

12 by same. Did he enter with you into the details of how he happened to have that $12,000.00, when he got it, and what subsequent disposition he made of it, & why he kept it back?

Ans. He did not.

13 by same. In this conversation, leaving aside his labor and difficulty incident to his week condition of body, did he speak coherently and intelligently?

255 Ans. He did not speak coherently. I understood, however, what he meant, while he was confused and obscure in making his statement.

14 by same. Did his mind wander, and did he seem to be stating merely imaginary facts or what he really recollected, both of the original transaction and the interview with Hoffman?

Ans. His mind did not wander, and I understood him to be stating what he recollected of the transactions to which he referred.

15 by same. Did he state to you what led him at so late a day to offer restitution to the pl'ffs; if yea, what?

Ans. He did. He said he thought he would probably not live long, and that when he went out of this world he wanted to be right (using that identical word)—he wanted to be right with his God.

256 16 by same. Did he at that time state that any of his family or others were opposing him in making restitution?

Ans. He stated that his brother was opposing him in the accomplishment of his object.

17 by same. Did he subsequently state that Mr. Peatross agreed to carry out his wishes?

Ans. He showed me a letter from Mr. Peatross (I can't undertake to quote the letter), but my recollection is that Mr. Peatross in a delicate manner expressed to Mr. Millner the opinion that he was in no mental condition to become a party to any contract, and I think he expressed substantially the opinion that Millner had expressed to me—that upon a fair settlement of his affairs with Hoffman, Lee & Co. they would be found considerably indebted to him, and declined to approve or become a party in any way to the proposed compromise.

18 by same. Did not Mr. Millner then seek to procure your services in *affecting* the same? If yea, state whether you
257 agreed to assist him and to what extent you have done so.

Ans. He did. I declined to give him any assistance or to have any connection with the matter any farther than to write an occasional letter making known his own views and wishes to his counsel.

19 by same. Did you not, on or about the 15th June last, express the opinion to Dr. Boyland that Millner's talk and continuous purpose to settle this matter were not compatible with insanity, or something to that effect?

Ans. I don't recall any particular conversation with Dr. Boyland at or about that time. There was, however, a time when I regarded Mr. Millner as understanding himself clearly about that matter, and I expressed that opinion to Dr. Boyland and to other persons; my impression, however, is that it was at a somewhat later day.

20 by same. Leaving aside the religious extravagancies
258 and the delusions spoken of in your examination-in-chief, has Millner, up to the present time, stated to you anything to convince you or to make you think that his recollection and memory of this special business and his purpose to settle the same were all or only part thereof the imaginations & delusions of a dis-or-ed mind? If yea, state what and when you changed from the opinion, if ever, expressed in your last answer.

Ans. Apart from the delusions and religious extravagancies of Mr. Millner which I have already detailed, he has said nothing to me to indicate that he is not a man of disposing mind and memory, with this exception, that he always accompanied the acknowledgment of the wrong done by Hoffman, Lee & Co. with the claim that they had largely defrauded him, and they would be upon any fair settlement largely his debtors. There was an inconsistency in these statements that always perplexed and troubled me in an effort to arrive at a proper conclusion as to his true
259 mental status. I cannot say positively that I have changed the opinion which I at one time entertained and expressed,

that Mr. Millner was mentally competent to engage in a business transaction. Subsequent developments, however, which I have already detailed at length, have raised in my mind a question which I have found it difficult to settle to my satisfaction, and that is how far these subsequent developments throw light upon his condition at the time that I have referred to, and these subsequent developments, taken in connection with the condition which I described him to be in upon and for several weeks after his arrival at the springs, to say the least, have led me to question the correctness of the opinion referred to. I do not say that I have changed that opinion, but that there is an unsolved question in my mind as to its soundness.

21 by same. Did he ever state to you that the $12,000.00 which he had in Feb'y, 1873, was, in fact, the money of Hoffman,
260 Lee & Co., which had been sent him for inv ment in tobacco to be manufactured and shipped to them for sale, or anything to that effect?

Ans. He did not.

22 by same. Might not his claim that the pl'ffs had defrauded him to the extent of $75,000.00 have been due to his desire to stand well in your eyes, and not, as you state, the statement of an inconsistent fact?

Ans. It might have been.

23 by same. Did you at his request seek to get Mr. Peatross here with a view to *affecting* said settlement?

Ans. I did at his request make an effort to get Mr. Peatross here with the view, so far as I was concerned, of having done what it might be proper in the judgment of Mr. Peatross to do. I thought as I told Mr. Millner in every conversation he had with me
261 that I thought his condition such as imperatively — demand the presence of his counsel or some tried and trusted friend if he proposed to engage in any contract or any important business transaction. I am frank to say that I should have been greatly gratified if the counsel of Mr. Millner could have approved of the proposition which he submitted or in any other way settled the controverted matter between these two parties, for I believe that the prosecution of this suit seriously imperils his life.

24 by same. Did you not at Millner's request write to judge Aiken to come and represent him in this matter?

Ans. I did; and I will add that I stated to Judge Aiken in that communication that I was of the opinion that Mr. Millner understood himself in regard to the matter of controversy.

25 by same. How did it happen that Millner asked you to write this letter to Aiken?

262 Ans. I cannot undertake to detail just what occurred, but when I learned from Mr. Millner that Mr. Peatross declined to visit or further advise Mr. Millner I told him that he was certainly entitled to and I thought ought to have the benefit of counsel; that I regarded Judge Aiken, of Danville, as an able lawyer and a fearless man, one who would not shrink from any responsibility when he was satisfied he was right, & that I would advise him to

retain his services, to get him to come here to the springs, to let him have a personal interview with him, and then having and opportunity of judging for himself of his capacity for transacting his business affairs and determining the propriety of putting into execution the offer of compromise which he had told me he had submitted to Mr. Hoffman.

25 by same. Did Millner intelligently appreciate this piece of advise?

Ans. He assented to what I said and requested me to write Judge Aiken to come down to see him.

263 26 by same. Was his exchange of counsel consistent with his previous purpose to carry out this settlement?

Ans. I cannot say that his change of counsel was specially consistent with that purpose, as I did not advise that he would retain Judge Aiken specially to carry out that purpose, but merely that he should have a competent and tried man, and that from his own section of country, to come and see him personally and to determine upon his own judgment what it was right and proper to do in the premises. I desire to add here that I have been in no sense and in no way a party to Mr. Millner's negotiations with Hoffman, Lee & Co. that beyond my advice to him to retain Judge Aiken. I have steadily and at all times declined to advise or to aid him, and my servise or servises to him at verious times have been such only as I should have felt bound to render to any man similarly situated. He has been exceedingly annoying and, except myself, no one

264 has seemed willing to be annoyed with him, and he has of necessity been thrown upon me.

27 by same. When last did Millner speak to you of withholding the $12,000.00 from Hoffman, Lee & Co. and the proposed settlement?

Ans. He last mentioned this subject to me upon the 14th or 15th of August last.

28 by same. What did he then say?

Ans. He said he thought, but intimated that he was not positive, that in the negotiation for the settlement in 1873 that he told Hoffman, Lee & Co. that the property conveyed by the deed, which I understood him to say had been executed, was all the property he had.

29 by same. Did he not say to you at some time, that he had told Hoffman in Febr'y, 1873, that he would give him a deed to all he then had if Hoffman would accept that in full of his

265 & 266 debt, and at the time he did so kept back from Hoffman the fact that he had this $12,000.00?

Ans. He did not.

30 by same. Did he tell you he gave the $12,000.00 to Millner Brothers?

Ans. He did not.

Redirect examination by def'ts' counsel:

1 Question. Was there any date, since your acquaintance with

Millner, when you would have entered into a contract of importance with him?

Ans. There has been no day since my first acquaintance with him when I would have entered into a contract with him about any matter of importance.

2 by same. From your knowledge of his condition do you think he was capable of undertaking the business interview with Mr. Hoffman which took place on the 12th day of June, 1885?

267 Ans. I do not think that upon that day he was capable of entering upon any important interview with any one unless aided and advised by some competent trusted man.

3 by same. Were you aware on that day that the interview that was then in progress between Millner & Hoffman was one involving much to Millner?

Ans. I was.

4 by same. Did you believe then that he was at a disadvantage?

Ans. I did undoubtedly.

5 by same. Mr. Hoffman knew that you were the proprietor of these springs & that Millner was a patient here, did he not?

Ans. Yes, sir.

6 by same. Did he inform you of the character of his business with Millner before the interview and invite you to be present?

Ans. He did not.

268 And further the deponent saith not.

THOMAS F. GOODE.

VIRGINIA, *Mecklenburg County, To wit:*

I, Chas. T. Beekes, a notary public in and for the said county of Mecklenburg, of the State of Virginia, duly commissioned and qualified as such under and according to the laws of said State, do hereby certify that the foregoing deposition of Thomas F. Goode was taken by consent of parties, by counsel, by me at Buffalo Lithia Springs, in said county, on Tuesday, 15th day of September, 1885, and that the same was sworn to and subscribed by the witness, Thomas F. Goode, before me and in my presence in my county aforesaid.

Given under my hand this 15th day of September, 1885.

CHAS. T. BEEKES,
Notary Public in and for said County of Mecklenburg.

Fee for depositions, paid by def'ts, $15.00.

CHAS. T. BEEKES, *N. P.*

Endorsed: No. 37. U. S. circuit court, at Danville, Va. Hoffman, Lee & Co. *vs.* James R. Millner, &c. Deposition of Thos. F. Goode, for def'ts. Opened Sept. 29, 1885, by consent of both parties, by counsel, in writing filed with this case. Chas. Martin, clerk. Copied May 3, 1886, for A. M. Aiken for W. J. Overbey, comm. for Millner. Filed Sept. 18th, 1885. Chas. Martin, clerk.

269 And on another day, to wit, on 29th day of September, 1885, the following agreement of counsel as to opening depositions was this day filed in the above cause of Hoffman, Lee & Co. *vs.* James R. Millner, &c.; which said agreement is in the words and figures following, to wit:

Whereas depositions have be- received by the clerk of the circuit court of the United States for the western district of Virginia, at Danville, in the suit of Hoffman, Lee & Co. *vs.* Millner & *als.*, & counsel on both sides desire the same to be opened at once so as to be used by all parties pending the preparation of the cause for a hearing, this is to certify our common consent to the opening of such depositions to be placed with the other court papers & used as if opened in court, &c., &c.

HOFFMAN, LEE & CO.,
By BERKELEY & HARRISON.
GREEN & MILLER.

PEATROSS & HARRIS &
A. M. AIKEN, *For Millner.*

270 Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* J. R. Millner *et al.* Agreement of counsel as to opening depositions Sept. 29, 1885. Entered in C't C't Order Book Sept. 29, 1885, and filed same date. Chas. Martin, clerk. Transferred to Chancery Court Order Book, p. 7.

And again, on another day, to wit, on the 18th day of November, A. D. 1885, the following was filed with papers in this cause, and is in the words and figures following, to wit:

HOFFMAN, LEE & Co.
vs. } In Chancery.
MILLNER & *als.*

This day John P. Millner & Joseph D. Blair, administrator of Joseph T. Millner, dec'd, appeared in court, by counsel, & moved the court to continue this cause until Wm. I. Overby, committee of James R. Millner, a lunatic, has had a reasonable time to file the answer of the committee of the said lunatic to the bill of the complainants for the reason that the allegations of the bill against the said John P. Millner & the said J. D. Blair, adm., &c., rests
271 solely upon the confessions and admissions of the said James R. Miller, a lunatic, made at a time when he, the said James R. Millner, was an insane man and incapable of in any way binding the said John P. Millner & Joseph D. Blair, adm. of Joseph T. Millner, and the court allows the said defendants sixty days in which to file their answer.

(Signed) HUGH L. BOND.

Endorsed: Hoffman, Lee & Co. *vs.* Millner & *als.* Entered & filed Nov. 18, 1885. Chas. Martin, clerk.

And on another day, to wit, on the 29th day of March, A. D. 1886, the following answer of W. I. Overby, committee, &c., of Jas. R. Millner, was received and filed; which said answer is in the words and figures following, to wit:

The answer of James R. Millner, a lunatic, by W. I. Oberby, his guardian *ad litem* and committee, and the answer of the said
272 W. I. Overby, guardian *ad litem* and committee of the said James R. Millner, a lunatic, to a bill of complaint exhibited against the said James R. Millner & others in the circuit court of the United States, at Danville, by Robert G. Hoffman and Charles O'Donnell Lee, partners under the firm and style of Hoffman, Lee & Co.

For answer to the said bill the said James R. Millner, a lunatic, by his guardian *ad litem* and committee aforesaid, says that he is a lunatic, of unsound mind, & knows nothing of the matters mentioned in the bill, — commits the protection of his interest to the court.

And the said W. I. Overby, the guardian *ad litem* & committee of the said James R. Millner, duly appointed by an order of the county court of Pittsylvania, a copy of which is herewith filed, marked Exhibit "A 1," answers and says that he knows nothing of his own knowledge of the matters & things alleged in the complainants' bill, & as the committee of the said lunatic he calls for full and sufficient proof of all of the allegations of said bill.
273 He says that the said James R. Millner is a lunatic, of unsound mind, & is at present confined in the asylum for insane persons at Staunton, in the State of Virginia, having been duly adjudged insane by three justices of the peace of the town of Danville, Va., pursuant to the laws of the State of Virginia, a copy of whose judgment is herewith filed, marked Exhibit "A 2," & prayed may be read as part of this answer.

This committee is informed and believes that on the 13th day of May, 1885, the day on which the bill alleges that Exhibit "Peatross No. 1," filed with the bill, was written to the complainants, & for a long time prior to said day—how long this committee does not know—the said James R. Millner was insane & incapable of entering into contracts of any kind or of binding himself by admissions.

He is informed & believes that on the 12th day of June, 1885, the day on which it is alleged that the said James R. Millner made the declarations, confessions, & requests to the complainant-,
274 R. G. Hoffman & James P. Harrison, at the Buffalo Lithia Springs, Virginia, & long before & ever since that date he, the said James R. Millner, was & has been insane & did not know the force, meaning, or effect of said declarations, confessions, & requests.

Therefore & in consideration of the ignorance of this committee, &c., of the matters & things alleged in the bill, he prays the protection of the court for the rights of the said James R. Millner, a lunatic.

And, having fully answered, &c.

(Signed) WILLIAM I. OVERBEY,
Sheriff of Pittsylvania County, and as Such Guardian ad Litem & Committee of James R. Millner, a Lunatic.

PEATROSS & HARRIS &
A. M. AIKEN, *For Respondent.*

COUNTY OF PITTSYLVANIA, *State of Virginia,* } *To wit:*

I, I. D. Coles, judge of the county court of Pittsylvania county, a court of records, do certify that W. I. Overbey, whose name is signed to the foregoing writing, personally appeared before me, in said county, on the 19th day of February, 1886, & made oath
275 that the statements of the foregoing writing were true to the best of his information & belief.

Given under my hand this 19th day of Feb., 1886.

I. D. COLES,
Judge C'ty C't of Pittsylvania C'ty.

Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* J. R. Millner *et al.* Answer of Jas. R. Millner & W. I. Overbey, G. *ad litem.* Filed March 29, 1886. C. Martin, clerk.

And on another day, to wit, on the 10th day of June, 1886, the following deposition of J. H. Estes for pl'ffs in this cause was filed; which said deposition, with notice of same, is in the words & figures following to wit:

The Commonwealth of Virginia to P. H. Boisseau, D. s'g't, Greeting:

We command you that you summon J. H. Estes to appear at our office, on Main street, Danville, Virginia, on Tuesday, the 20th day of April, 1886, at 3 o'clock p. m. to testify and the truth to say in a certain matter pending in the superior court of Baltimore,
276 Md., between Hoffman, Lee & Co., plaintiff-, and J. R. Millner, &c., defendant-, and this he shall in nowise omit under the penalty of £100; and have then and there this writ.

Witness F. F. Bowen, commissioner in chancery of said court, this 20 day of April, 1886, and the 110 year of the Commonwealth.

F. F. BOWEN,
Commissioner.

Copy.

The s'g't- return thereon is as follows, to wit:

Executed April 20th, 1886.

P. H. BOISSEAU, *D. S.*

Fee, 20; paid.

A copy.

Teste:

F. F. BOWEN, *Comm'r.*

Copy.

The deposition of J. H. Estes and others, taken before F. F. Bowen, a commissioner appointed by the superior court of Baltimore city, the 9th day of February, 1886, empowered to examine witnesses in a cause pending in said court between Robert G. Hoffman & Charles O'Donnel Lee (Hoffman, Lee & Co.) *vs.* James R. Millner, on behalf of the plaintiffs in said cause, which commission is attached to the defendants' depositions taken before said commissioner and filed in said cause, to which reference is made.

277 By virtue of said commission the said commissioner, on the 20 April, 1886, proceeded to take the following depositions:

Present: J. P. Harrison, B. Green, for pl't'ffs. Present: A. M. Aiken, for def'ts.

The witness, J. H. Estes, being first duly sworn, deposes and says:

By J. P. Harrison:

1st Quest. State your age, residence, & occupation.

Age, 56; residence, Danville, Va.; occupation, merchant.

2 Quest. Do you know James R. Millner; if yea, how long have you know- him & what, if any, is your relationship to or connection with him?

I know him and have known him for upwards of 20 years. I am connected through my wife. She is a cousin to him.

3 Quest. Did you ever go to Philadelphia or Baltimore with him; &, if yea, when?

Yes, sir; I went with him last March a year ago—1885—to Philadelphia, to a hospital—Burn Brae hospital. Then I went to Philadelphia only.

278 4 Quest. What physician or physicians did he consult there?

He saw the head physician of the hospital. I don't recollect his name.

5 Quest. Did he consult any other physicians while on that trip?

Yes, sir; in Philadelphia. I don't recollect his name.

6 Quest. How long was he away on that trip?

Three or four days.

7 Quest. Did you see much of him prior to that time—when you went to Philadelphia with him?

I saw him two or days in Danville before he went. He staid at my house a part of the time.

8 Quest. Did he then or previously ever mentioned Hoffman, Lee & Co., or Mr. R. G. Hoffman to you?

No, sir; he never mentioned it at that time nor previously to that time that I know of?

9 Quest. Did he ever mention to you Hoffman, Lee & Co.
279 or Mr. Hoffman?

Yes, sir. I think it was some time in May, 1885, I was at his house.

10 Quest. Who was present at the time?

No, one.

11 Quest. Had he sent for you to come to his house, or how did you happen to be there?

No, sir. He didn't send for me. I was with my family on a visit to his brother. Mr. Jno. P. Millner & my family went up to spend the day at his house, about 6 miles from there.

12 Quest. How did it happen that you and he were alone if you went to his house with your whole family?

We took a stroll around his premises, as well as I recollect.

13 Quest. Did you know Hoffman, Lee & Co. or either of the firm?

No, sir.

14 Quest. Did you mention their names to him first or he to you?

280 He mentioned them first to me.

15 Quest. What did he say of them to you & why did he mention them to you?

(The committee of Jas. R. Millner, by counsel, object to the witness making any statement of what Jas. R. Millner said on that occasion, for the reason that at that time & for an indefinite period before the said Jas. R. Millner was insane.)

He said some years ago in a settlement with them he believed they had swindled him to a large extent. As well as I recollect, he said that they had not dealt fairly with him; that if he thought he could get a fair settlement out of them he would want them to pay him what they owed him, & if he owed them he wanted to pay it. He did not believe they were honest men. I think he said everybody in that neighborhood who had had any transactions with them had fared as he had. Being his friend, I suppose he mentioned them to me.

16 Quest. Did he say he owed them anything?

281 (Same objection as before; &, further, because it is a leading question.)

He didn't tell me he owed them anything.

17 Question. Didn't he tell you of a compromise he had made with them in 1873?

(Same objection as above.)

He said something about it, but I don't recall what he said. I never did understand it.

19 Question (*sic*). Did he tell that he had or had withheld or kept back any property or money from Hoffman, Lee & Co. at that time or in that compromise?

(Same objection as before; &, further, because the witness has just said that he don't recollect what he said & never did understand it.)

He mentioned for several years previous to his failure he had put aside some money, as well as I recollect, some two or three thousand dollars a year outside his business. That's all I recollect about it.

20 Quest. Where did he put that money?

(Same objection as above.)

282 He didn't tell me.

21 Question. Where did he get it from to put it aside?

(Same objection as above.)

I don't know; he didn't tell me.

22 Question. Did he say that he had kept this consealed from Hoffman, Lee & Co.?

(Same objection as above.)

No, sir.

23 Question. Did he tell you that Hoffman, Lee & Co. had been his commission merchants & made him large advancements previous to his failure?

(Same objection as above.)

He mentioned that they had been selling his tobacco for him.

24 Question. It is in proof that this compromise was made in February, 1873, and that the relations between Jas. R. Millner & Hoffman, Lee & Co. then terminated. Did Mr. Millner ever refer to them before to you in connection with that compromise; if yea, when?

No, sir; never.

283 25 Question. Did he, upon the occasion you speak of, express any desire to make restitution to them or to relieve his mind of any trouble in connection with them before he died?

(Same objection as before.)

Yes, sir; he did. He said if he was in debt to them he wanted to pay them, & if they were in debt to him he wanted them to pay him. He didn't state which was in debt to the other, but he believed they were in debt to him.

26 Question. Did he say his mind was troubled by the consealment from Hoffman, Lee & Co. or by anything he had done to them?

(Same objection as above.)

No, sir; not by any consealment or by anything he had done to them.

27 Question. Did he say he desired to be at *piece* with God & man & to in anywise *to* make them satisfaction?

(Same objection as above.)

I don't recollect that he made use of that expression. No, sir; I didn't hear him say anything about that.

284 28 Question. How much did he say he had kept back from Hoffman, Lee & Co. or put aside in all?

(Same objection as above; &, further, because the witness has not stated that Millner said he kept back anything from Hoffman, Lee & Co.)

He never told me anything about the amount.

29 Question. Did he say he had ever asked for a settlement with Hoffman, Lee & Co.?

(Same objection as above.)

No, sir.

And further this deponent saith not.

J. HOWARD ESTES.

Witness:
F. F. BOWEN.

In witness whereof I have hereunto set my hand and seal this 20 April, 1886.

F. F. BOWEN, *Comm'r.* [SEAL.]

Expences of commissioner:

S'p'a, service	50
Wit., 50; 15.68 fols. @ 20	3 65
Stamps	
Plaintiff	4 15

A copy.
Teste:

F. F. BOWEN,
Comm'r (for U. S. C't).

Comm'r's fee, 15.68 folios @ 20c., $3.15.

285 Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* James R. Millner, &c., plaintiffs. Deposition of J. H. Estes. (Copy for U. S. C't.) Filed June 10, 1886. Chas. Martin, clerk.

And on the same day, to wit, on the 10th day of June, A. D. 1886, the following depositions were filed and marked: "Plaintiffs' depositions of J. P. Harrison, J. D. Traynham, W. F. Patton, C. A. Pritchett;" and said depositions are in the words and figures following, to wit:

The depositions of James P. Harrison and others, taken before F. F. Bowen, a commissioner in chancery of the hustings court of Danville, Va., pursuant to notice herewith returned, on the 27th day of May, 1886, to be used as evidence by the plaintiffs in a suit pending in the circuit court of the United States at Danville, Va., in which Hoffman, Lee & Co. are plaintiffs and J. R. Millner &c., are defendants.

Present: Jas. P. Harrison & B. Green, for plaintiffs. Present: A. M. Aiken, W. T. Harris, for defendants.

The witness, JAS. P. HARRISON, being first duly sworn, deposes and says:

286 By B. GREEN:

1. What is your place of residence, your profession, & how long have you been engaged in that profession?

Danville, Virginia; I am a lawyer, & came to the bar September 1st, 1877.

2nd. Do you represent Hoffman, Lee & Co. in this suit against James R. Millner & others; and, if yea, when were you engaged to represent them?

My firm, Berkeley & Harrison, represent them, along with Green & Miller. We have been their counsel in Danville & this locality since November 10th, 1880, succeeding Robertson & Berkeley, who succeeded Robertson & Green as their counsel here in this suit. We heard of it first on June 4th, 1885, & have represented them herein ever since.

3rd. Did you at any time during 1885 go as their counsel to Buffalo Lithia Springs while James R. Millner was there? If yea, state fully the circumstances under which you went and all conversations, if any, which you had with James R. Millner while there in relation to the claim asserted against him in this suit.

287 (Counsel for James R. Millner's committee objects to the witness stating in answer to this question any declaration or confession of James R. Millner in any conversation the witness had with him, for the reason that the said James R. Millner had been for an indefinite time prior to the conversation with the witness & at the time & is at present an insane man.)

On June 4th, 1885, Mr. Hoffman and Mr. Lee came to Danville on other business, and while in our office showed us "Exhibit Peatross No. 1." I said that Mr. Millner was able to make restitution & was worth, I thought, from $50,000 to $75,000. I advised our clients to see whether their letters which were shown us then or later—or rather copies were shown us—in answer to Mr. Peatross had reached Mr. Peatross & Mr. Millner respectively. After the departure of our clients I received a telegram to come at once to Baltimore. I went in obedience, not knowing when I left Danville why I was wanted.

288 When I reached Baltimore I was shown Exhibit Boyland No. 1 & was asked to advise whether Mr. Hoffman should go to Buffalo Lithia Springs in response to its request. I asked to examine the books & correspondence between Mr. Millner, Millner Bros., & Hoffman, Lee & Co. prior to 1873, and when I had gone through most of it I advised Mr. Hoffman to go, as it might save a suit. He then asked me to accompany him. I refused at first, but finally consented provided my presance should not be made known to Mr. Millner. Mr. Hoffman's reason for wishing me to go was, he said, that he might have a lawyer present to draw any necessary papers or contracts, and I consented to go only in this respects & for this purpose. We went by way of Richmond, and reached Buffalo Lithia Springs about 9 or 10 p. m. Thursday night,

June 11th. Next morning I would not go to breakfast with Mr. Hoffman, as I did not desire to see or be seen by Mr. Millner, as I did not wish to have any influence one way or another upon him. I saw Mr. Millner comming from breakfast
289 at the upper end of the ball-room, & I went by Spring No. 1 to the breakfast-room. When I joined Mr. Hoffman, Dr. & Mrs. Boyland after breakfast I went away from the springs, going back of the cabins to a small store on the road, & there I stayed until noon, when a messenger came from Mr. Hoffman to say that he had told Mr. Millner of my presence. I then went to the croquet grounds and played croquet until 1 p. m. Mr. Millner sent and asked me to walk with him to Spring No. 2. We met at the end of the row of cottages, just in front of the bar-room, & went to Spring No. 2—Mr. Millner, Mr. Hoffman, & I. Mr. Millner walked with a cane & seemed feeble, but less so than when I had seen him on the cars some weeks or a month before. He began the conversation by asking after some of our friends on Paxton street. When he lived in Danville we lived on Paxton street near each other & I knew him quite well. He then said that Mr. Hoffman had
290 been very hard on him. I asked him how. He told me that in 1873 he had kept back $12,000 of Hoffman, Lee & Co.'s money. I demurred and asked him not to speak of that to me. He stopped and in an impatient way said he had sent for me for that very purpose. I told him I preferred not to talk with him except in the presence of his counsel. He said he wanted me to see Mr. Peatross; that he had promised to do nothing without Mr. Peatross's advice and consent; that Mr. Peatross was a good man & he had great confidence in him, & that he wanted me to go to Danville & tell him that he had settled with Mr. Hoffman, & that he wanted to tell me all about it that I might tell Mr. Peatross; that he was not insane; that his folks had threatened to put him in the asylum & had said he was insane, but he wasn't. He told me that he had never had a moment of peace since he did this thing, & that it had almost killed him, but he had gotten so bad off now that he was going
291 to die soon & he wanted to make his peace with God and man. He said Mr. Peatross had given him a book of sermons by Moody and one of them was about restitution, and that that sermon said a man could not have his soul sayed without making restitution; that he had taken this $12,000 from Mr. Hoffman & he wanted to pay him all he could, but it was over $20,000 & he could not pay it all. He then complained again that Mr. Hoffman was hard upon him, & he asked me what I thought his house on Paxton street was worth. I said $5,000 at the outside on easy terms. He said $6,000 at least. He said he thought Mr. Hoffman ought to take that and be satisfied. I said he admitted he owed Mr. Hoffman over $20,000.00. He then asked me to beg Mr. Hoffman, who was standing by, to take the house, saying that he was too sick to do any more work; that he had a daughter, who was very
292 dear to him, & a large family. Mr. Hoffman said that he could not just take the house. After some talk Mr. Millner

said that he had given Mr. Hoffman a statement of his property & said he had agreed to give him about $2,000 besides what the Paxton-street house was worth, but he could not do anything without Mr. Peatross' consent; that I knew he was a good man. I asked Mr. Millner if he had put the $12,000.00 in Patten's Bank. He said, "No." I then asked him if he had kept the money at home. He said, "No." I then asked him—I remember we had just reached the road on our return, & I had paused to ask these questions—where he had put it, & he replied, "Mr. Harrison, that's my business; I had it."

After crossing the road he asked Mr. Hoffman to go on, & Mr. Hoffman left us. He said he was tired, & took a seat on a rock, I think, just where the walk in front of the row of cottages in which our rooms were—next to the road—leads off. He
293 reiterated all he had said, & again urged me to help him settle; that if his people did not let him settle he would go crazy sure enough. I forgot to state that he told me that he had given this money to Millner Bros. to use in their business. He also told me that he had made two wills. In one he made his brother John an executor along with his wife, Sallie, but that his little daughter had come to him & begged him not to let her uncle John have anything to do with the property, & he had gotten the will & handed it to Sallie, his wife, and she had burned it up; that he had gotten Mr. Peatross to make another will for him, & that was in force. I asked him if he owed much money. He told me he owed his brother-in-law, a man named Payne, I believe, a small amount, and there was a little balance between him & a man named Stanford or Stanhope; I have since learned the name is Stafford. He
294 told me Mr. Pleasants ought to owe him about $10,000 subject to credits. He believed he would owe him at least $8,000. We then went to dinner. Shortly afterwards we started for the depot. After my foot was on the carriage step Mr. Millner came out & made me go into his room, & began to go over his story a third time. I told him I knew all he had said. He then implored me to see Mr. Peatross as soon as I came to Danville. We reached Danville to breakfast on the 13th. I took Judge Green & my partner, Mr. Berkely, & went down to Mr. Peatross' office after Mr. Hoffman had left for Balto. on the V. M. train. Mr. Peatross said Mr. Millner was insane & he would not go to see him & would not allow him to make any settlement, & if he made any he would advise his family to upset it. I returned to my office, & that evening I wrote the letters found *on* our letter book then in use, on pages 92, 98, 104, & 106, the two first to my clients & to their Baltimore coun-
295 sel, Messrs. John & David Stewart, & the third to Dr. Boyland, the fourth to Jas. R. Millner. I would say that Mr. Millner's conversation was slow and full of repetitions, but I have given the substance of it, having refreshed my mind often by memoranda I then made or rather made after I got home in Danville.

4. Did you at any time after this have any conversation with Jas. R. Millner in regard to the claim of Hoffman, Lee & Co.? If yea, state it in substance.

(Counsel for the committee here repeats the objection made to the preceding question.)

When we took the depositions of Dr. Boyland & Col. Good I saw Mr. Millner, but did not say anything to him on the subject at all, although at table he referred to Hoffman, Lee & Co. in the presence of Judge Aiken, but only casually. I again saw him on the street in Danville either a few days before or a few days after there
296 was a commission *de lunatico* called in Danville to sit upon him. I approached him to greet him. He seemed to think I was going to speak about this case, and said, "I can't say anything now. I have left it to my counsel; see them. By the grace of God I mean to do what's right," and seeing what he mistook I left him.

5. How long had you known James R. Millner prior to your interview with him as above related at Buffalo Springs?

Ever since he settled on Paxton street. I may have met him shortly before, but I hardly ever had a dozen words with him at a time until about a month or so befor- I went to the springs—it must have been four or five months. I saw him on the V. M. train & asked him where he had been, & we had considerable conversation about home & home people.

297 6. Was there anything in his manner or conversation in the interview at Buffalo Springs which indicated that what he was saying to you were not facts, but delusions?

(Counsel for the committee object to the foregoing question upon the ground that the witness has no right to give his opinion, but simply to state facts.)

On the night of June 1th I was, I believe, telling Dr. Harvie, my family physician & also Mr. Millner's, of what Mr. Hoffman & Mr. Lee had told us. He then told me Mr. Millner's mind was very weak. When talking with Millner at Buffalo Lithia Springs I remembered what Harvie had said and took special notice of Mr. Millner's manner & words. I saw no indication of mental delusion. His words were mouthed very much at times & he repeated a good deal, but he stated many things that I knew to be facts, & I asked him some questions to test his memory. He himself said that he was charged with being insane, but he denied it. Of course
298 my opinion is worthless, but I was convinced that he was not, & that he knew what he said fully.

Cross-examination by A. M. AIKEN:

7. In your capacity as counsel did you draw the bill of the complainants in this suit?

Yes, sir; consulting with Judge Green & my partner.

8. Is the original bill in your handwriting?

It was, I am sure, written by me & then the copy filed made in Baltimore by the caligraph.

9. Have you had access to all of the correspondence, books, papers, &c., in the possession of the complainants in relation to their business with James R. Millner?

I had, I think. I went to Baltimore twice before I drafted the bill, & then took the rough draft with me there and had it finally approved by my clients & their counsel. Indeed, my recollection is that I sent it once by post, then upon its return put it into final shape, meanwhile being advised by my clients & their counsel & by my own examination pretty fully of all papers, &c., in their possession.

299 10. Did they exhibit to you the contracts & agreement referred to in the bill as having been made prior to 13th Feb'y, 1871?

Not that I recollect. I do not now recollect seeing it, although they put before me, at my request, all letters from J. R. Millner & Millner Bros. & their letter-press copies of answers & all papers of all kinds, & it must have been along with the rest, though I have no recollection of it specially.

11. Did they exhibit to you the mortgage deed by which Millner secured their advances in 1871 & '2, or did you see it at all before you filed the bill?

I do not recollect it specially. I certainly have never read a word of it even to this day.

12. The bill alleges that on the 15th day of March, 1873, the complainants consum-ated the agreement to accept the mortgage property by taking the deed from Millner & wife. Had that been an oral agreement—I mean the agreement of Feb'y, 1873?

300 I do not know. I understood from my clients that there was no written agreement, but that after the terms were settled in Danville, on Feb'y 28th, 1873, by Mr. Hoffman & Mr. Millner, Mr. Hoffman asked time to secure Mr. Lee's consent. There was some sort of a writing drawn up by Capt. Robertson, I believe, but this was later than Feb'y, '73, I believe. Of all this I know nothing of my own knowledge further than what my clients said & what the correspondence filed disclosed.

13. Did they exhibit to you any written agreement of the terms of the settlement which the bill alleges took place in Danville on the 28th of Feb'y, 1873?

They did not, save as embraced in the deed to them & is gathered from the correspondence. I saw no seperate draft of any such agreement; never heard that there was any such.

14. Did they tell you whether Millner's wife was a party to the mortgage made in 1871 & '72 to secure advances.

301 They did not, if I recollect, tell me anything further about thoes mortgages, except that under their terms the money was advanced to be used and in buying & manufacturing tobacco to be shipped to them to cover advances. I did not consern myself with the previous mortgages & never remember to have read them.

15. Will you examine the two papers shown you, marked Exhibit Harrison No. 1 & No. 2, & say whether they are legally certified copies of the mortgages referred to in the bill?

They are legally certified copies of the originals now of record in the clerk's office of the county court of Pittsylvania, but whether

they are the mortgages referred to is a matter of pure conjecture, though I presume they are.

16. Did they tell you what the oral agreement of Feb'y, 1873, was? I mean what was agreed by Millner & upon what terms & inducements they released Millner from the debt due them.

302 Mr. Hoffman did, & Mr. Lee told me what Mr. Hoffman told him on his return from Danville after the agreement was made.

17. What did he say the agreement was on both sides?

I can state what I understood from various converstions with the gentlemen & from their depositions what the agreement of February 28th, 1873, was, but I cannot give the precise words or pretend to exact accuracy. Mr. Hoffman came to Danville and put up at the Paxton House, I believe. While here he & Mr. Millner had a conference. Mr. Millner wanted to settle & so did Mr. Hoffman. Mr. Millner threatened to go into bankruptcy unless Mr. Hoffman took what he had & gave him a release in full of all his debt. Mr. Hoffman finally agreed to take a deed to the Axton farm, that being all Mr. Millner had, as he was assured, in full settlement of the debt, and accordingly the agreement was made that Mr. Millner should convey to Hoffman, Lee & Co. all his property, and in con-

303 sideration of this he should have a full and final release from the balance of the debt; that finally this was done, & Messrs. Hoffman, Lee & Co. closed the transaction, believing that Mr. Millner had represented the truth to them; had used their advances fairly in the purchase of the tobacco & the shipment of same, & neve- suspected the contrary until Mr. Peatross' letter was received, in May, 1885. Such in substance is my recollection.

18. Look at the paper shown you, a copy of which is filed, Exhibit Harrison No. 3, & say in whose handwriting it is, its date, who signed it, & what it is.

It is dated February 28th, 1873. It is in Capt. Harrison Robertson's handwriting. It is signed by James R. Millner & Robert G. Hoffman, for Hoffman, Lee & Co. I identify the latter signature to be genuine. It is witnessed by Capt'n H. Robertson's genuine signature & by Jos. T. Millner. The postscript, dated May 3rd, 1873, is signed by Robertson & Green, attorneys, in the handwrit-

304 ing of Judge Green, and was written by Judge Green. I never saw it before or heard of it until now. After reading it I find it to be to the effect that Hoffman, Lee & Co. were to accept a deed in fee to the property conveyed to B. Green, trustee, for them in full of all debts due them by Millner, & is in substance about the same as Exhibit Hoffman No. 2, except as to some tenancy agreements & something about fixtures. The papers, however, speak for themselves. Capt'n Robertson's attestation is in these words:

"Signed, sealed, and delivered in duplicate in presence of H. Robertson."

[On the margin:] Continued at question 31.

By consent of counsel the further cross-examination of J. P. Harrison is suspended, and the plaintiffs proceed with the examination of D. J. Traynham.

The witness, D. J. TRAYNHAM, being first duly sworn, deposes & says:

By J. P. HARRISON:

19. What is your age, residence, & occupation?

Age, 42; residence, Stuart, Patrick Co., Va.; occupation, minister of the gospel.

305 20. Have you ever served as pastor in the immediate vicinity of Axton, Henry county, in the neighborhood of Jas. R. Millner's home?

That was in the bounds of my circuit.

21. Do you know Jas. R. Millner? If yea, since when, & was he or not a member of your church?

I know him. I don't think I've known him more than 2½ years. He joined my church some time during last year, by certificate. It was the time he was at Buffalo Springs. I received the certificate while he was there. It was given by N. H. D. Wilson, of the N. C. conference, from Buffalo Springs.

22. Where was Jas. R. Millner living when you first knew him?

He was living near Axton.

22½. Can you not fix that date more definitely than by saying about two & a half years ago? Give the year, if you can.

No, sir; that's as near as I can come to it. It was 1884.

306 23. Did Jas. R. Millner ever mention Hoffman, Lee & Co. to you prior to 1885?

No, sir; he never did mention the name to me that I remember.

24. Did Jas. R. Millner ever say anything to you about any business transactions of his in 1873 or prior thereto?

(This question is objected to by counsel for Millner's committee for the reason that Jas. R. Millner having been insane at the time he may have made any statement to the witness, they cannot be used against him.)

I don't remember that he did. I heard him speak of the mistakes he had made in his buildings on the place he was then living; that he had put too much money in them.

25. Did he ever talk to you of his spiritual salvation; &, if yea, did he advise with you at all as to the duty of restitution?

(Counsel for Jas. R. Millner's committee objects to the above question for the same reason for which they objected to the preceding one.)

307 I remember when he sent for me to talk with me about his spiritual condition last year. I think before he went to Buffalo Springs. I went there on several occasions by his request, & carried him a copy of sermons by B. L. Moody, the evangelist, & requested him to read the book. On my next visit he asked me to read a sermon which made reference or had reference to the doctrine of restitution, & asked me my opinion as to Mr. Moody's ideas on that subject as contained in that sermon. I told him that I agreed

with the ideas therein contained. He had some conversation. I can't recall the conversation we had at that time.

26. Did you advise him that it was his duty to make restitution of whatever he had wrongfully taken or withheld from any one?

(This question is objected to for the reason that James R. Millner was mentally incapable of receiving advise & not bound to follow it if given.)

308 Well, I don't think I put it in those words, only I agreed to what Moody said.

27. Did he say that he had wronged any one to whom he thought it his Christian duty to make restitution, if that sermon was true doctrine?

(This question is objected to for same reason stated in preceeding objection.)

I don't think that he said he had wronged any one.

28. Did he say anything about having kept back money from Hoffman, Lee & Co. in 1873, or any any one else?

(Same objection as above.)

If he did I don't remember any such expression.

29. Did he at any time thereafter recur to the duty of restitution as an essential to his soul's salvation?

(Same objection as above.)

I can't answer that question positively.

Cross-examination by A. M. AIKEN:

309 30. Did not Jas. R. Millner at the time you presented him a copy of Moody's sermons on restitution advise you to send a copy of it to Hoffman, Lee & Co., Baltimore?

He did not.

And further the deponent saith not.

D. J. TRAYNHAM.

Continuation of the cross-examination of JAS. P. HARRISON:

31. Who was the family physician you told of Millner's confession & desire to make restitution on the night of June 4th, 1885?

Dr. Lewis E. Harvie. He was my family physician & had been Millner's. I told him of what Hoffman, Lee & Co. had told us that morning, & then he made the remark that Millner was mentally weak.

32. He referred to the confession and restitution, did he not?

I don't know what he referred to. We talked a long time
310 about Millner & about his health, & I don't remember that his remark referred to the confession & restitution especially. I know that was the first time I ever heard his mind was supposed to be impaired, although he lived on our street, & I mentioned it in my examination-in-chief to show why I took particular notice of his words & manner at Buffalo Springs. This was the very first I ever

heard of his being weak-minded, & of course I made a mental note of it.

33. Was not the remark drawn from Dr. Harvie by your statement that Millner, through Mr. Peatross, had confessed to defrauding Hoffman, Lee & Co.?

I did not know at the time of any such confession. I had read Peatross No. 1 & had told Hoffman, Lee & Co. that I thought Millner was able to make restitution. I told Harvie what Hoffman, Lee & Co. had told me & of Peatross No. 1. What in particular
311 called forth Harvie's statement I cannot say, but I believe it was simply brought out by my inquiries of Millner.

34. Don't Peatross No. 1 contain the alleged conversion?

I don't so construe it, except in general terms. The details I only learned later from Millner himself. I did not have Peatross No. 1 with me when I was talking to Harvie, & therefore cannot say how much I recollected then of it or how much I stated to him of its contents after a hasty perusal.

35. You had heard Dr. Harvie say that Millner's mind was impaired & had seen Mr. Peatross' letter to the plaintiffs with a similar statement before you left Baltimore for Buffalo Springs, had you not?

Yes.

36. Did you inform Millner's counsel of your intention in going to Buffalo Springs or that you were going?

312 I had no manner of intention or expectation to go to Buffalo Springs when I left Danville on the night of June 9th. When I reached Baltimore I was shown Boyland No. 1, & was asked to advise whether Mr. Hoffman should go. I went through all the papers as well as I could in restricted time, & so advised. It was then that he asked me to accompany him, & after hesitating I consented provided my presence should not be made known to Millner, and I never would have seen him but for his own direct importunate request for the purpose stated, viz: He said he had promised Mr. Peatross to do nothing except upon his advice & with his consent, & he wanted me to see him for him, as I have stated. Therefore I did not inform the counsel, as I had no opportunity of doing so after I determined to go.

37. Mr. Hoffman assured you that if you would accompany
313 him to Buffalo your presence should not be made known to Millner, did he not?

He did & it was only then that I agreed to go, it being agreed that after they had come to terms without me then Millner was to be advised of my presence in order to have the agreements reduced to legal shape.

38. Did you go out to the store on the road to avoid being seen by Millner?

I did, & for no other reason.

39. Did you remain there until you were sent for to put the agreement in legal shape?

I remained there until I was advised by a negro boy, I believe, from Mr. Hoffman or Dr. Boyland that Mr. Hoffman had told Mr. Millner I was at the springs; then I went to the croquet ground. I

received no message to come & put the agreement in legal shape.

314 40. Your sole object in going to Buffalo was to reduce to the form of a written contract any agreement between Millner & Hoffman, was it?

And to advise Mr. Hoffman, as his counsel, that only—I had neither the wish nor the expectation to see him myself as it turned out I did.

41. And Mr. Hoffman made known to Millner your presence, although you we- not needed to prepare a contract, did he?

I only know what Mr. Hoffman told me. Shall I state that?

42. No. Will you say whether Mr. Hoffman violated the terms upon which you went with him to Buffalo?

He did not, because he told Mr. Millner, after they had been in conference some time & after Millner had made a full confession & had agreed to give Mr. Hoffman the house in Danville & about $2,000.00 in money, that I was there & would reduce the mat-

315 ter to writing. Then Millner said he could do nothing without the consent of Mr. Peatross, & expressed the wish to see me to get me to lay the result of the meeting before Mr. Peatross & urge him to make it final. I only consented to see him in this view & at first I tried to keep him from telling me more, as Mr. Hoffman, who was present, will testify, when Millner said I could not convince Mr. Peatross he was in his senses unless he told me all, & then I could prove to him that he knew what he was talking about. Of course, the first part of this answer I heard from Mr. Hoffman when I asked him why he disclosed my presence.

43. Did you consent to see Millner after Hoffman told you why he disclosed your presence?

I was playing croquet—in the midst of a game—when some one came—it was Mr. Hoffman, I believe—& said Mr. Millner wanted to speak to me. I dropped my mallet, excused myself to the players, &, seeing Mr. Millner coming towards me, joined him, & we walked to Spring No. 2 together. That is the only consent I gave.

316 Wh was advised first at the store, I did & said nothing, but came down to the hotel. Then we went to the croquet ground. I was there an hour or more before I was asked to join Mr. Millner, & I did so.

44. Was it not one of the conditions upon which you went to Buffalo that you should have no conversation whatever with Mr. Millner?

No, sir; except, as I have said, that he was not even to be advised of my presence except to consum-ate the contract; but I expected that when this was done I would see him and talk with him, although not on this matter.

45. Has not Mr. Hoffman sworn that to have been understood between you?

I quote Mr. Hoffman's testimony, viz: "It was distinctly understood between Mr. Harrison and myself that Mr. Harrison should keep entirely away & not have any conversation with Millner dur-

ing our entire interview." That is certainly true, & I am
317 glad to have my foregoing answer so cor-oborated; but there was no agreement or understanding to prevent me from seeing and conversing with Mr. Millner on other subjects after their interview if my presence was disclosed.

46. In Baltimore, on the first day of Sept., 1885, did you not ask Mr. Hoffman the following questions, viz: "What condition did Mr. Harrison require before he would agree to accompany you to Buffalo," and did he not give the following answer: "That he should avoid any interview with Jas. R. Millner?"

Yes; redirect int. No. 3; and that is entirely consistent with my present answers.

47. And you did interview Jas. R. Millner after that?

I did not, emphatically. I have stated fully what passed between us. I only asked him, as I recollect, two sets of questions. The first I have stated, as to when he had the money. See sheet 2, bottom of page 3, & top of page 4. I told Judge Green in the recess
318 what the other was, but it has slipped my memory. I did not interview Mr. Millner, & while he forced me to hear his statement three times the same day it was not of my seeking nor by my wish, except that I admit that I did ask thoes questions, hoping to prove *aliunde* from the bank books that he had the $12,000.00, & I cannot recall now what the other was, though it is very important for my clients' case. It will come back presently, & I will ask to be allowed to state it.

48. After informing him that you preferred not to talk to him, except in the presence of his counsel, did you not follow up your caution by asking the questions you have mentioned?

I did; after Mr. Millner stated that he wanted me to go to Mr. Peatross for him; that he had settled with Mr. Hoffman; that unless that settlement was consum-ated it would kill him or put him in the insane asylum, becaus- he could not rest in mind or soul, and after he told me that Mr. Peatross & his family would say he
319 was insane I listened to his story & asked him some questions, in order to test the accuracy of his memory about people & things I knew of myself, which I have not referred to in my deposition, & asked him these others to strengthen my clients' case. This last I admit.

Continued until to-morrow at 9 a. m.

F. F. BOWEN, *Com'r.*

COMMISSIONER'S OFFICE, 28 *May*, 1886.

Present: Same parties as on yesterday.

Continuation of cross-examination of JAS. P. HARRISON:

49. Mr. Hoffman was with you and heard your conversation with Millner on your walk to Spring No. 2 from the croquet grounds & heard you tell Millner that you preferred not to talk to him, except in the presence of his counsel, did he not?

Mr. Hoffman was with us—always in earshot—walking, how-
320 ever, to the one side of Millner & I to the other a part of the way. When the second conversation took place Mr. Millner asked Mr. Hoffman to leave us, & he did so. I presume he heard; he was close enough to hear.

50. If Mr. Hoffman was asked whether you advised Mr. Millner in this regard will you please state his answer and quote it?

"Certainly not in my presence, and not to my knowledge afterwards. It was distinctly understood between Mr. Harrison & myself that Mr. Harrison should keep entirely away & not have any conversation with Millner during our entire interview, & when I went to make arrangements for a carriage to go to Scottsburg took occasion to see Harrison & make arrangements for him to meet me & to get into the buggy at once upon the hour appointed for us to start. Unless Mr. Millner had insisted upon seeing Mr. Harrison they would not have met upon this visit"—is the answer Mr. Hoffman gave to cross-interrogatory No. 47 of his depositions, viz: "In the conversation between Jas. R. Milner & Mr. Harrison
321 did Mr. Harrison counsel or advise Mr. Millner in the premises?" and the above is the question & answer shown me by Judge Aiken as the one he designates for this answer. I have not read Mr. Hoffman's deposition since it was taken, except extracts from it.

51. You did not expect to have a contract to draw between Millner & Hoffman under any circumstances at Buffalo on the occasion of your visit there, did you?

I expected that Mr. Hoffman & Mr. Millner might come to an agreement, & that I might be called on to put it in legal shape. That's what Hoffman wanted with me & to advise him. I did expect it, provided they should agree & wish me to draw it.

52. Did Mr. Hoffman contemplate that they would under any circumstances agree on that occasion?

He certainly did if I understood his words & actions. What else could he have gone down there for?

322 53. And would it have been consum-ated then if Millner had agreed?

I presume so.

54. Did Mr. Hoffman tell you or Millner either that he would not consent to make any settlement with him personally without the consent of his family & legal advisers?

He did after we were advised by Millner himself that his family & legal advisers insisted that he was insane. I advised Mr. Hoffman that he could not safely do so. My answers just previous refers to our views in Baltimore & before we had been told by Millner himself that his family & legal advisers had tried to put him in the asylum to prevent his making restitution. He told me that his brother John had told him that he was a fool; that he had settled with Hoffman, Lee & Co., & when he persisted then John tried to have him put in an insane asylum in Pennsylvania somewhere to prevent it.

323 55. Was it for the purpose of getting you to bear a message to his legal adviser to consent to a settlement or an agreement that Millner sought an interview with you?

So I understood, not to a settlement but to the settlement, the terms of which he had made with Hoffman already in the interview before I saw him, or so far as I know he knew I was anywhere near.

56. State any other question you asked Millner besides those mentioned.

Since yesterday I asked Judge Green if he could recall what I reminded him I had forgotten to state in answer 47, & he refreshed my memory. I recollect distinctly that when Millner told me he had taken $12,000.00 from the advances made him by Hoffman, Lee & Co. to put into tobacco it surprised me that they did not detect so large a misappropriation, and I asked him how it was possible that he could take as much at one time, & he told me
324 that he was of the opinion that Hoffman, Lee & Co. had not made him fair sales, & therefore he set apart about $2,000 or $3,000 a year out of the advances, that being his idea of the profits he should have made. I do not recall specially any other questions, though I asked him several in order to test his memory. I remember now he told me, whether I asked him or not I cannot say, that he had $7,000.00 in greenbacks & $5,000.00 in gold, and that he gave these two sums to Millner Bros., all, as I understood it, in the tobacco business. I heard nothing about any other business with Millner Brothers from him.

57. What was your purpose in asking these questions?

In asking where he had the $12,000.00 I wished to know if he had it at W. S. Patten, Sons & Co., bankers, Danville, Virginia. I had heard it in Danville that Millner had made it a boast that he had gotten ten thousand dollars out of Hoffman, Lee & Co. &
325 put it in that bank, & I wanted to get the means of establishing the truth. Of course, if it was a fact then I could have a better chance to convince Mr. Peatross that his mind was not at fault. It was against my personal interest that the settlement agreed upon between Millner & Hoffman should stand, as it cut up by the roots all show for litigation, & by litigation I live; yet when Millner asked me to intervene with his counsel I did my best to carry out his wishes. At the same time, I had an eye to a possible &, as I then thought, a probable suit. As to the second question, it was suggested by surprise, as I did not see how he could have abstracted as much money from such careful business men as Hoffman, Lee & Co. without detection. The other questions were about little things of common acquaintance between us, asked purely to test his memory.

58. You mean to say, then, that it was with an eye to liti-
326 gation that you *you* asked the questions?

Indeed I did not. My answer is not intended to be so construed. I did not feel sure that the settlement would be consu-mated but I hoped it would & believed it might be. I honestly desired it

for the sake of Millner & his family, & wish now it had been, as I believe it would have saved his health.

59. But in case the agreement failed you wished to "prove *aliunde* from the bank books" that he had the $12,000, did you not?

I did indeed.

60. Did you tell Millner that this was your object?

I did not.

And further the deponent saith not.

JAMES P. HARRISON.

Continued until to-morrow at 9 a. m.

F. F. BOWEN, *Com'r.*

327 It is admitted by parties' counsel that "Ex. Peatross No. 1," filed with the bill, is in the handwriting of R. W. Peatross.

F. F. BOWEN, *Com's'r.*

28TH MAY, '86.

The taking of these depositions was resumed by consent of the parties.

Present: J. P. Harrison, B. Green, for pl'ffs.
" W. T. Harris, A. M. Aiken, for d'f't.

A *subpœna duces tecma* was issued by the commissioner to W. F. Patton to bring certain books, the original of which is herewith returned. The witness appeared before the commissioner without the books, & being sworn, deposes & says—

It is admitted that F. F. Bowen is not a commissioner of the circuit court of the United States for the western district of Virginia specially appointed to take this testimony, but that he is a
328 commissioner of chancery for the hustings court *court* of Danville, and as such he takes the testimony, without any objection being raised to his competency, for that purpose.

28 May, '86.

F. F. BOWEN, *Com's'r.*

61. What is your name, age, and business?

W. F. Patton; age, 37; business, banker, of the the firm of W. S. Patton, Sons & Co.

62. Did James R. Millner bank with that consern January 1st, 1873; &, if yea, how long has he kept his accounts with you?

He has had an account with us for 15 years or more—ever since the war. He commenced business there shortly after the war and has been doing business there ever since.

63. Will you produce the books showing his accounts for the periods between the dates January 1st, 1873, and January 1st,
329 1874, and the dates January 1st, 1885, and the present time respectively before F. F. Bowen, the examiner, for inspection by counsel?

I will. I here produce the books called for.

64. Please examine Book No. 5 and say what is the date of the

last item of Jas. R. Millner's account therein, and then examine book No. 6 & say what is the date of the first item therein.

In Book 5 the last date is 24 Oct., 1872. In Book Six the first date is 22 March, 1875.

65. What is that first item, 22 March, 1875?

A deposit of $7,000. " March 22, 1875," by cash, $7,000.

66. Will you please file with the com'r a copy of the account of Jas. R. Millner from January 1st, 1885?

(Counsel for Millner's committee objects to the above question & the account called for because the transactions of Jas. R. Millner with the witness' firm during the time embraced by the ques-
330 tion are not in issue in this suit & because it is not alleged that the said Millner had any transactions with the plaintiffs during this time.)

I will. " W. F. P. 1."

67. When & why did you close out the account of James R. Millner?

(This question objected to for above reasons & irrelevancy.)

W. I. Overby was appointed his committee & he checked out the balance 9 Jan'y, 1886, & that closed the account.

68. And further the deponent saith not.

W. F. PATTON.

Continued until to-morrow at 9 a. m.

F. F. BOWEN, *Com'r.*

Continued from day to day until 1 June, 1886.

Present: A. M. Aiken, for Millner's committee. Present: J. P. Harrison, B. Green, for pl'ffs.

The witness, C. A. PRITTCHETT, being duly sworn, deposes & says:

331 69. State your age, occupation, & residence, and if you know Jas. R. Millner. If yea, how long have you known him?

Age, 56; farmer; Pittsylvania Co., Va. I have known Jas. R. Millner ever since he was a small boy. We were boys together.

70. Are you acquainted with his handwriting?

I think I am. He writes a very peculiar hand & a very hard hand to read.

71. Please examine the two letters here shown you, dated respectively "Axton, Va., Sept. 6th, 1872," and "Axton, Va., Dec. 6th, 1872," & say if you know in whoes handwriting they are & by whom signed?

(Counsel for Jas. R. Millner's committee objects to the introduction of the letters above mentioned because they show to have been dated prior to the settlement of 28 Febr'y, 1873, & do not contain a reference to any matter in this suit.)

332 I believe they are in the handwriting of Jas. R. Millner. I have seen a good deal of his writing & have received notes from him, & I would be willing to swear point blanc to that signature—that the signatures are Jas. R. Millner's Ex's "Pritchett 1" & "Pritchett 2."

72. Were you living near Jas. R. Millner in 1873 (February 28th, 1873), and have you seen much of him since?

I was living in six miles of him & have seen him very often since.

73. When he failed or made an assignment of his property to Hoffman, Lee & Co., Feb'y 28th, 1873, do you know what property he then owned—*i. e.*, prior to the assignment?

(This question is objected to because it is not in evidence that James R. Millner either failed or made an assignment to Hoffman, Lee & Co.)

No, sir; I do not.

333 74. Did James R. Millner ever speak to you or in your presence of the settlement he made with Hoffman, Lee & Co. at that time? &, if yea, please state when & where & what he said.

(Above question is objected to because any statement of Jas. R. Millner, being thoes of an insane man, cannot be used against him.)

No, sir; he never spoke to me.

And further the deponent saith not.

C. A. PRITCHETT.

Taken, subscribed, and sworn to before me the dates above mentioned.

F. F. BOWEN, *Com'r.*

Com'r's fee: 16 h'rs, @ 75c., $12.00.

Endorsed: Hoffman, Lee & Co. *vs.* Jas. R. Millner, &c. Plaintiffs' depositions of J. P. Harrison, J. D. Traynham, W. F. Patton, C A. Pritchett. Filed June 10, 1886. Chas. Martin, clerk.

And on the same day, to wit, on June 10th, 1886, the following exhibits were filed with the foregoing deposition & are marked as follows, viz: "Harrison Exhibit No. 1;" which said ex-
334 hibit is in the words and figures following, with the endorsements thereon, viz:

This indenture, made this 13th day of February, 1871, between James R. Millner, of the county of Pittsylvania and State of Virginia, of the first part; Robert G. Hoffman, on account of the firm of Hoffman, Lee & Co., of the city of Baltimore and State of Maryland, of the second part:

Whereas the said Hoffman, Lee & Co. have agreed to advance to the said James R. Millner, of the first part, when they may be called upon, between the 10th day of March and the 10th day of May next, the sum of fifteen thousand dollars ($15,000.00), to be repaid by the first day of March, 1872, with interest at the rate of six per centum per annum: Now, this indenture witnesseth that the said James R.

Millner, party of the first part, as well for and in consideration of the aforesaid sum of fifteen thousand dollars ($15,000.00), with interest as aforesaid, and for the better securing the payment thereof, with its interest, unto the said Robert G. Hoffman, his executors, ad-
335 ministrators, and assigns, in discharge of the said sum of fifteen thousand dollars ($15,000.00) and its interest aforesaid, as of the further sum of one dollar to him in hand paid by the said Robert G. Hoffman at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed unto the said Robert G. Hoffman, his heirs and assigns, all that tract, piece, or parcel of land situated, lying, and being in the county of Pittsylvania and State of Virginia, containing two hundred acres, more or less, and bounded as follows, to wit: By the lands of John R. Millner, Dr. J. C. James, John D. Millner, and Samuel Harvey, dec'd, and more particularly described by a deed from John R. Millner to the said James R. Millner, party of the first part, which said deed is now of record in the clerk's office of the county court of Pittsylvania county, Virginia, together with all and singular the buildings, improvements, and ap-
336 purtenances, including the tobacco factory situated thereon, together with all the fixtures and appliances thereto belonging, and the reversions, remainders, rents, issues, and profits thereof; to have and to hold the said piece or parcel of land, the buildings, improvements, and appurtenances hereby granted as mentioned or intended so to be, with the appurtenances, unto the said Robert G. Hoffman, his heirs and assigns forever. The said James R. Millner, of the first part, also binds himself to ship to the said Robert G. Hoffman, on account of the firm of Hoffman, Lee & Co., of the city of Baltimore and State of Maryland, of the second part, all the tobacco which the said James R. Millner shall work or cause to be worked during the present year, 1871, and it is expressly agreed and understood that *that* the said part- of the second part is not to sell or dispose of the said tobacco or any part thereof at less than the market value of such tobacco under any circumstances, not even in the event of the death of either of the parties in interest or the dis-
337 solution of the said firm of Hoffman, Lee & Co.: Provided always, nevertheless, That if the said James R. Millner, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said Robert G. Hoffman, his executors, administrators, or assigns, the aforesaid sum of fifteen thousand dollars ($15,000.00), with interest thereon as aforesaid, or so much thereof as may be due and unpaid at the day and time hereinbefore mentioned and appointed for the payment thereof, with interest upon the same as aforesaid, without any fraud or further delay and without any deduction therefrom, then and from thenceforth as well this indenture and the estate hereby granted as the said debt shall cease and determine, become absolutely null and void to all intents, and thing herein contained to the contrary notwithstanding.

In witness whereof the said James R. Millner, party of the first part, has hereunto set his hand and affixed his seal the day and year first aforesaid.

JAMES R. MILLNER. [SEAL.]

338 STATE OF VIRGINIA, }
County of Pittsylvania, } *To wit:*

I, C. W. Venable, a notary public for the county aforesaid, in the State of Virginia, do hereby certify that James R. Millner, whose name is signed to the writing hereto annexed, personally appeared before me, in my county aforesaid, and acknowledged the same, the said writing bearing date on the 13th February, 1871.

Given under my hand this 1st day of March, 1871

C. W. VENABLE,
Notary Public.

In the clerk's office of the county court of Pittsylvania county, on the 30th day of March, 1871, the foregoing writing was admitted to record upon the certificate of its acknowledgment thereto annexed, and I do certify that the fifteen dollars in revenue stamps have been placed on said writing according to law.

Teste: THOS. L. SCRUGGS, *Clerk.*

A copy.
Teste: W. B. SHEPHERD, *Clerk.*
May 22, '86.

Endorsed: Hoffman, Lee & Co. from James R. Millner. Copy deed, Harrison "Exhibit No. 1." F. F. Bowen, com'r. Filed June 10th, 1886. Chas. Martin, clerk.

339 And again, on the same day, to wit, on the 10th June, A. D. 1886, the following exhibit was filed with foregoing deposition and was marked "Exhibit Harrison No. 2," and is, with the endorsements thereon, in the words & figures following, to wit:

Whereas by a deed of mortgage dated the 13th February, 1871, which was duly recorded in Pittsylvania county court on the 30th of March, 1871, James R. Millner granted to Robert G. Hoffman a certain tract of land and other property therein described for security for the payment of a debt of $15,000.00, advanced to said Millner by Hoffman, Lee & Co., of Baltimore, to aid him in his business of manufacturing tobacco, during the year 1871; and whereas it has been agreed between the said Millner and the said Hoffman, Lee & Co. that they shall advance to him the further sum of $15,000.00 between this date and the first of June, 1872, if said Millner should need it or call for it or any part of the said last-mentioned sum upon the same terms and conditions as were expressed in said deed in regard to the advances made therein:

340 Now, this deed witnesseth, that the aforesaid deed of mortgage shall be, and is hereby, extended and continued in force as security for the said additional sum of fifteen thousand dollars or as much thereof as may be advanced as aforesaid for the present year's operations on the same terms and conditions and covenants set forth in said deed.

This deed is made without prejudice to the rights of either party accrued or accruing under the said deed of Feb'y 13th, 1871.

Witness the following signatures and seals this the 3rd day of May, 1872:

JAMES R. MILLNER. [L. S.]

TOWN OF DANVILLE, *sc:*

I, Jno. R. Patton, a notary public in & for the town of Danville, in the State of Virginia, do certify that James R. Millner, whose name is signed to the foregoing writing, dated the 3rd day of May, 1872, has acknowledged the same before me in the said town.

Given under my hand this 3rd day of May, 1872.

JNO. R. PATTON, *N. P.*

341 In the clerk's office of the county court of Pittsylvania county, on the 7th day of May, 1872, the foregoing writing was admitted to record upon the certificate of its acknowledgement thereto annexed, & I do certify that fifteen dollars in revenue stamps have been placed on said writing according to law.

Teste: L. SCRUGGS, *Clerk.*

A copy.

Teste: W. B. SHEPHERD, *Clerk.*

Endorsed: Hoffman, Lee & Co. From James R. Millner. Copy deed, "Harrison Exhibit No. 2." F. F. Bowen, com'r. Judge A. M. Aiken, att'y. Fee, 40c. Filed June 10, 1886. Chas. Martin, clerk.

And again, on the 10th day of ——, —, the following exhibit was filed with the foregoing deposition and is marked "Exhibit Harrison No. 3;" and said exhibit, with the endorsements thereon, is in the words and figures following, to wit:

Memorandum of agreement made this 28th day of February,
342 1873, between James R. Millner, of the county of Pittsylvania, of the one part, and Robert G. Hoffman and C. O'Donnell Lee, partners under the firm — and style of Hoffman, Lee & Co., of the city of Baltimore, Maryland, acting herein by the said Robert G. Hoffman, of the other part.

Whereas the said James R. Millner has heretofore executed a deed of mortgage to the said Robert G. Hoffman for the benefit of said Hoffman, Lee & Co., dated 13th Feb., 1871, to secure advances of $15,000 made to him by Hoffman, Lee & Co. in 1871, and afterwards by another deed dated 3rd day of May, 1872, the said James R. Millner agreed with the said Hoffman, Lee & Co. that the aforesaid mortgage deed should be extended and continued in force as security for the payment of the further advances of $15,000 made by him in 1872, as will more fully appear by reference to the said deeds, both duly recorded in Pittsylvania county; and

Whereas upon a settlement of accounts between the parties
343 respecting the advances secured by said deeds the said James R. Millner is found indebted to said Hoffman, Lee & Co. in the sum of $15,758.67, which sum it is agreed far exceeds the value

of all the property, real and personal, embraced in said mortgage deeds; and

Whereas the said James R. Millner is unable to pay the said debt in full and has offered, by way of compromise to said Hoffman, Lee & Co., that he and his wife will by a proper deed surrender and release to said Hoffman, Lee & Co. or to said Robert G. Hoffman, for their benefit, all the right, title, and interest whatsoever in law and equity, including the wife's contingent right of dower, of them, the said James R. Millner & wife, and to all the property of every kind embraced and described in said deeds of mortgage, except as hereinafter stated, provided the said Hoffman, Lee & Co. will accept the said surrender and release when perfected by a proper deed in full satisfaction and discharge of his said debt to them and will
344 allow him to remain in the occupation of the land described in said mortgage deeds as the tenant of said Hoffman, Lee & Co. until the 1st day of January, 1874, without paying any rent for the same, it being understood that since the dates of the last-mentioned deed a portion of the tobacco fixtures of the tobacco factory described in said deed of mortgage has been sold by said Jas. R. Millner to Millner Bros. with written consent of said Hoffman, Lee & Co., and the portion so sold is not included in the present compromise, which includes, however, all the residue of the mortgage property except that portion of the tobacco fixtures so sold; and whereas the said Hoffman, Lee & Co. have accepted the said offer of compromise:

Now, therefore, the parties do agree that the said James R. Millner & his wife shall, without unreasonable delay, proceed to execute and acknowledge a proper deed relinquishing, surrendering, and
345 releasing to said Robert G. Hoffman for the benefit of said Hoffman, Lee & Co. all their right, title, and interest whatsoever in law or equity in and to all the mortgaged property aforesaid, except the portion of the fixtures sold as aforesaid; and upon the delivery of said deed executed and acknowledged as aforesaid, ready to be recorded, said Hoffman, Lee & Co. shall and will accept the same in full satisfaction and discharge of the said debt due to them by said James R. Millner & will allow him to occupy the land, including the factory and all the buildings upon it, as their tenant during the remainder of the present year without paying any rent. It is understood and agreed that he shall not have the right to use any of the fixtures and appliances described in the mortgage deeds, but Hoffman, Lee & Co. shall take possession
*their*of at once and dispose of the same as they think proper.
346 It is further understood and agreed that after the deed of release and surrender aforesaid shall have been delivered and accepted as aforesaid said James R. Millner shall not be held responsible for loss or damage to the property while he may remain in the occupation thereof, by fire or other accident, to any greater extent than a tenant is by law responsible to his landlord in such case.

Witness the following signatures and seals:

JAMES R. MILLNER. [L. S.]
ROBERT G. HOFFMAN, [L. S.]
For Hoffman, Lee & Co.

Signed, sealed, and delivered in presence of—
H. ROBERTSON.
JAS. T. MILLNER.

Mr. James R. Millner has this day complied with his written contract by delivering to us the deed of himself & wife ready for recording.

ROBERTSON & GREEN, *Att'ys.*
HOFFMAN, LEE & CO.

May 3rd, 1873.

Endorsed: Hoffman, Lee & Co. with Jas. R. Millner. Compromise agreement, May 3, '73, "Harrison 3." Filed June 10, 1886. Chas. Martin, clerk.

347 The following was filed with the deposition of Harrison & others & marked "W. F. Patton, 1," and is in the words and figures following, to wit:

James R. Millner in Account with W. S. Patton, Sons & Co., Bankers, Danville, Virginia.

Dr.					Cr.			
1885.					1885.			
February	13	To C	C	50 00	Jan'y 1	By bal. from L. D, p. 336		1,176 76
	16	" "	C	126 00	13	" bal.	S	20 00
	26	" "	"	306 19	M'ch 19	" "	"	211 20
March	14	" "	"	303 00				
	30	" "	"	47 25				
		Bal.		575 52				
				1,407 96				1,407 96
May	6		J. D 4	50 00	May 1	By bal. ac. rend		575 52
	21		C	50 06	6	" "		280 00
	21		"	108 06	26	" tender		20 00
June	2		"	30 00				
	24		"	150 00				
	27		"	134 91				
July	15			332 53				
		Bal.		30 08				
				875 52				875 52
Sept.	2		J., 273	30 00	Aug. 1	By bal. ac. rend		30 08
	"		C	10 00	27	" " "		244 77
	3		"	177 82	Sept. 3	" " "		12 05
Oct.	31		"	1 00				
		Bal.		68 08				
				286 90				286 90
		Bal. to p. 499 L...	A, B	68 08	Nov. 2	Bal.		68 08

We certify that the above transcript from our Ledger A A was made by Mr. Jas. P. Harrison in our office & carefully compared by us with our ledger & found to be a true & exact copy. We therefore ask the commissioner, Mr. F. F. Bowen, to file it, in fulfilment
348 of our promise to do so, with W. F. Patton's deposition in Hoffman, Lee & Co. *vs.* Millner.

W. S. PATTON, SONS & CO.

Danville, Va., June 4, 1886.

Endorsed: "W. F. Patton, 1." F. F. Bowen, com'r. Filed June 10th, 1886. Chas. Martin, clerk.

And again, on the same day, to wit, on the 10th day of June, 1886, the following was filed with the deposition of J. P. Harrison and others, and is marked "Pritchett No. 1," and is in the words and figures following, to wit:

AXTON, VA., *Sept. 6th*, 1872.

Messrs. Hoffman, Lee & Co., Baltimore, Md.

DEAR SIRS: Your favor of the 28th August to hand. Contents noted. It seems you think very hard of the manner in which I wrote you, but if you were placed where I am, with no sales made except below cost, when other manufacturers say they are making money, & principally Danville men, I think you would be as badly fretted as I am; & as to not accepting your propositions relative to storing tobacco in my factory, instead of attributing it to my ignorance you should have attributed it to my having done business with you for 6 years & acted squarely with you, & while you had all of my property under mortgage & knew that you would get all the tobacco you required of me what I did not believe you would have done if you had the confidence in me that you should have had or that I had in you. My letters of the 6th of August are enough to convince you whether I had any confidence in you *are* not, &, so far as prices are concerned relative to my tobacco, I want you to be governed by those letters. As to trying to reflect upon you or your house, you know I did not. I only mentioned what they said & have talked pretty freely in this country, & I heard one among the largest manufacturers in this State say that Baltimore was a perfect hole of theft, & that we would never make any money there without the reduction of the tax — make us, & instead of that helping us it seems that it will be a great disadvantage to us—especially to me—as I could sell my fine tob. before at 80c. & New York can't move it, you say, at 70c.; & another thing I want you to bear in mind—I am not the only man you asked to pack up his tob. in factory in same way. Probably they have not said to you what they thought of it, but have to others; but I am not that kind of a man. What I have to say relative to you I say it to you as I do to every other man & as all honest men will do. I want you to be governed by my letters of 6th of August, but try & get me 68c. or 70c. for my fine tob., for you know that is low for that quality of tobacco, especially when tobacco has not declined more than from 7c. to 9c. upon a reduction of the tax 12c.

I shall work and ship you as fast as I can.

Yours truly, JAMES R. MILLNER.

Endorsed: Hoffman, Lee & Co. *vs.* Jas. R. Millner. "Pritchett 1." F. F. Bowen, com'r. Filed June 10th, 1886. Chas. Martin, clerk.

And again, on the same day, to wit, on the 10th of June, A. D. 1886, the following was filed with the depositions of J.

P. Harrison & others, and was marked "Pritchett No. 2," and is in the words and figures following, to wit:

AXTON, VA., *Dec.* 6, 1872.

Mess. Hoffman, Lee & Co., Baltimore, Md.

SIRS: Your letter of the 2nd confirmed my opinion that it is best for us to stop writing to each other, as it places us wider apart & m-y engender feelings added to those already in existence, from what you have said to others, that might prevent a peaceful conference & a settlement of the matter between us, for which you did not have the ability, & probably the wish for incarceration by a process of law. It would have led to that. As you were the only parties that I was acquainted with in your city, I could not with honor have asked you to have become my surety for at court; & not only that, if I am correctly informed, you said had it not of been
352 & 353 for Mr. Hoffman I would not have got into you as deep as I did. Now, I want you to distinctly understand that I have — gotten into any man, & have never tried & don't think any honest man will try & get that out of another man that don't belong to him. You only gave me the money as you agreed & I drew it only as I needed it & some time after you promised it, & you have failed to comply with your contract reletive to sending me money. You certainly could not have expected me to have continued shipping tobacco to you. The truth of the business is, when you gave me the money (without you have reference to the last $500.00 (five hundred dollars), which you will get in money if I justly owe you that much on a settlement, as I think I will have that much coming from New Orleans, & I have closed up my acc't with everybody except you by selling some of my fixtures, but not as *money* as you gave me the privilage of doing. I wrote you that I did not
354 intend to sell any of them, as I would only like a few hundred dollars of paying out, but when I got your letter afterwards & saw nothing but a low sail I thought it was best to pay up everything & have some little money to pay expenses & meet the issue.

You knew that my tobacco would more than pay you & there would be money coming to me, but through your negligence the tobacco you carried from last year moulded & you knew nothing of it (at least if you did you said nothing about it) until you had done giving me the money; & after my tobacco had been in your hands for more than 6 months & then pronounced sound by you, & then to make arrangements with me for this year upon that basis at what you could get then for it, then for you to let it remain there within a few days of 6 months longer, & through a hot summer at that, without an examination, for it to mould, now, in the name of God, can you consider me either morally or legally bound for
355 said loss? You seem to harp upon the power I gave to J. T. Millner relative to my business, & quote an extract of my letter. I wrote you once before that he was no agent of mine, & that he transcended his instructions by me, for I told him most positively before he started to Baltimore that I did not consider myself

morally or legally bound for any loss on the tobacco that you had carried over from last year, by mould, & that I would submit to no loss on said tobacco, & I told him when he got back, in fifteen minutes after I examined the papers, that he had done wrong in writing you the letter that he did, & that I never intended to stand said loss, because I did not consider it right, just, or honest, & he will swear to above statement I have made in court, & neither do you think it is right, but want me to shoulder it & pay for your negligence, & I don't intend to do it, but intend to do what is right, just, & honest between man & man when we meet, and if
356 you don't think so, then you have as — access to the laws of Virginia as I have. I will meet you at any time it suits your convien-ance at my house or in Danville; would prefer your coming to my house (will treat you well and take pleasure in talking to you), as, outside of a few hundred dollars, property is all I have to settle with, & prefer your seeing of same before a settlement.

I asked you once to let me move my tobacco to other markets. Your reply was, Give us the name of the parties, & if we consider them worthy of credit you can do so by paying us commissions upon same, & now what is the use of your writing to me that I can redeem my tobacco on hand. I have got no money, & you know no merchant will advance more than ⅔ upon tobacco shipped to him, & no house of any respectability is going to have anything to do with a lot tobacco that is in dispute or tied up, and you knew it when you wrote it.

You can arrive at the weights of my tobacco a damned
357 sight easier by looking at the stamp than you can by weighing of it when you make sales.

Resp. yours, JAMES R. MILLNER.

Endorsed: "Pritchett, 2." F. F. Bowen, com'r. Filed June 10th, 1886. Chas. Martin, clerk.

And again, on the same day, to wit, on the 10th day of June, 1886, the following defendants' depositions of Dr. McGuire, J. D. Blair, Dr. Lewis E. Harvie, Dr. W. A. Trotter, & part of J. P. Millner's was filed in the suit of Hoffman, Lee & Co. *vs.* J. R. Millner, &c.; which said depositions are in the words and figures following, to wit:

Whereas certain depositions have been taken under a commission issued in behalf of the committee of Jas. R. Millner from the court of the city of Baltimore in a matter therein pending between Hoffman, Lee & Co. *vs.* Jas. R. Millner & *als.*, it is agreed that F.
358 F. Bowen, the commissioner who took said depositions under said commission, shall copy the same & file the said copy, with copies of all exhibits, duly attested, to be read in the suit of Hoffman, Lee & Co. *vs.* Millner & *als.*, now pending in the circuit court of the United States for the western district of Virginia, as if taken therein.

Dated at Danville, Va., April 5, 1886.

BERKELY & HARRISON,
GREEN & MILLER,
Att'ys for Hoffman, Lee & Co.
PEATROSS & HARRIS,
Att'y- for J. R. Millner, with A. M. Aiken, Att'y for J. R. Millner's Committee.
A. M. AIKEN,
Att'y for the Committee of J. R. Millner.

The deposition of Dr. Hunter McGuire, taken before John Rutherford, a notary public in and for the city of Richmond, Va., at the office of said McGuire, in said city, on the 20 day of February, 1886, to be read by consent of all parties on behalf of the defendant in a suit pending in the superior court of Baltimore city, Maryland, in which R. G. Hoffman & Chas. O'D. Lee, partners under the style of Hoffman, Lee & Co., are plaintiffs and
359 James R. Millner is defendant.

Present: James P. Harrison, counsel for pl'fs.
" A. M. Aiken, " " d'f'ts.

HUNTER MCGUIRE, a witness, having been duly sworn, deposeth as follows:

1 Quest. State your age, residence, & profession.

Answer. Fifty years old; Richmond, Va.; physician.

2nd Question. State how long you have been practicing your profession & whether your practice is extensive or not.

Ans. Thirty years; yes.

3rd. State whether you know the defendant to this suit, James R. Millner; &, if yea, when you first became acquainted & how you happened to know him.

Answer. He came to my hospital January, 1885, as a patient.

4th. From what disease, if any, was he suffering?

Ans. Mental disease; almost entirely so; little, if any, physical trouble.

5th. Will you state to what extent he was troubled with
360 mental disease and state any of his symptoms—his conduct, appearance, & acts.

Ans. He was so irrational that the inmates of the hospital were afraid of him. His delusions were chiefly religious. "Jesus Christ had told him that I could cure him" was a common expression with him almost daily. This impression would last for a day or two when, without apparent cause, he changed his mind & thought I did not understand what was the matter with him. He wandered about the hospital, often getting into the wrong room, to the embarrassment of the inmates, read his Bible constantly, frequently cried as if in great mental distress, unable to explain the cause of his distress, though apparently willing to do so. I saw him daily while an inmate of the hospital, but for a short time each day; considered

him so irrational that I did not give him the medicine to take, but left it with the nurse.

6th. Will you state how long he remained at your hospital, the name of the hospital & your connection with & how long
361 you have been connected with it & the number of patients generally there for treatment.

Ans. I don't know. He was at my hospital in Jan'y, 1885, and staid, I think, several weeks. He came again Sept. 23, 1885, & staid till Oct. 18th, 1885. The name of the hospital is "St. Luke's Home for the Sick," and I have been connected with it for three years, it being my private hospital. The average number of patients is about forty.

7th. When Millner returned in September, 1885, what were his symptoms and conduct, & what — your impression of him?

Ans. Just the same impression he gave me *in* Jan'y 7, 1885.

8th. Have you had any experience with mental disease in your practice?

Ans. About as much as a man with my extensive practice would have. I occasionally see cases of my own or in consultation. I make no specialty of it, as I am no expert about it.

362 9th Quest. From what you saw of Mr. Miller, did you or did you ... consider him a sane man?

Ans. I did not consider him a sane man.

10th. To what extent did you consider him insane?

Ans. That is very difficult to answer. The borderland between sanity & insanity is so slight that it cannot well be defined.

11th. Do you think that he was capable of distinguishing right from wrong, or that he was capable of rational action?

(Objected to until the question defines more particularly the date to which it applies.)

Ans. A nice distinction between right and wrong he was incapable of very often; sometimes he could make them. The condition of his brain was uncertain—thoroughly unreliable. I am referring to the condition of his brain, not to his character.

12th. Do you intend that your answer shall apply to his
363 condition during his visit to the hospital, both in Jan'y & September, 1885?

Ans. Yes.

13th. At either time did you think his mind was capable of entering into or binding himself to the performance of important contracts?

(This question is objected to, since the witness *his* stated that he is not an expert in insanity, & while he can state facts & (possibly) general conclusions (therefrom), as to mental conditions only expert testimony is admissible & competent to give opinion upon the question propounded.)

Ans. No.

Cross-examination *of* counsel for plaintiffs:

14th. Was Millner'- condition in September no worse than in January?

Ans. No, as far as I can judge.

15th. Was his condition in the interim improved or worse?

Ans. I did not see him in the interim.

10th. Was Millner totally or partially insane?

364 Ans. I don't know what he means. You had just as well ask whether a man is totally or partially dead.

17th Qu'st. What is partial insanity?

Ans. I am not an expert on insanity or anything else.

18th. If a man should believe himself an inspired apostle & on that subject should invariably prove himself insane, would he therefore be insane as to all subjects & incompetent to transact business & make contracts?

Ans. I don't think he would necessarily be insane on all subjects. A contract by such a man would be an unsafe one.

19th. If a man should believe himself possessed of twenty thousand spirits or devils and live under that belief constantly, but on all other subjects should be rational, would that delusion invalidate his contracts & impair his business engagements?

Ans. To my mind, it would.

20th. Do you know that Millner did not manage his affairs—recollect his business with Hoffman, Lee & Co.?

365 Ans. I don't think he did.

22nd Qu'st. If it is true that Millner in the interim of his visits to your hospital remembered & related facts connectedly & stated rationally that he had entered into certain business and desired to make certain settlements, which statement and actions were exactly such as a sane man would have made under similar circumstances, can you say that he was not sane in these matters?

Ans. I don't believe that Millner was sufficiently sane at any time between Jan'y, 1885, and Sept., 1885, safely to transact any business, especially business requiring memory and reason. If I am mistaken about his insanity during that interval, of course he could transact business.

23rd. Did not Millner when he came to you in September, and also in January, 1885, suffer from "Bright's disease?"

Ans. No; he thought he did, but he did not. He had albumen in his urine, but did not have "Bright's disease."

366 24th Question. What was his physical ailment, if any, & was his mental trouble due to the physical disease or the reverse?

Ans. He had no physical trouble to account for the mental disease. The presence of albumen in his urine was not due to disease of the kidney-. He had urethal trouble that would account for that.

25th. What is an insane delusion or delusional insanity?

Ans. What Millner had.

26th. What did Millner have?

Ans. Delusional insanity.

27th. Upon what matters or subjects did this delusional insanity exist?

Ans. Religion chiefly—"Bright'- disease."

28th. Did it extend to matters of business or money matters?

Ans. I never examined him in reference to that. I don't know.

29th. Can you state positively of your own knowledge that Millner did not recollect business matters and did not recall business transactions so as to state his recollections clearly and to act upon them rationally? I ask for your knowledge, now.

367 Answer. No; I cannot.

Re-examination:

30th. Have you ever been called into court to testify as an expert upon insanity in civil or criminal trials?

Ans. Yes.

31st. Have you ever been applied to by persons with mental diseases for treatment?

Ans. Yes; repeatedly, but I don't know much about it and don't believe any one does.

32nd. In your opinion, if a person is insane upon any subject, is it safe to say he is sane upon any?

Ans. No.

HUNTER McGUIRE.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Jno. Rutherford, a notary public for the city aforesaid, in the said State, do hereby certify that the foregoing depositions were duly taken, sworn to, & subscribed before me at the time & place mentioned therein.

Give- under my hand this 22nd day of February, 1866.

JOHN RUTHERFORD, *N. P.*

368 At the execution of a commission issued out of the superior court of Baltimore city the 9th day of February, 1886, directed to F. F. Bowen, Danville, Va., empowering him to examine witnesses in a case pending in said court between Robert G. Hoffman and Charles O'Donnell Lee (Hoffman, Lee & Co.) *vs.* Jas. R. Millner, I, F. F. Bowen, in said commission named, by virtue thereof having this 18th day of February, 1886, at Danville, in the State of Virginia, taken the oath of the said commission annexed, proceeded to take the following depositions without notice, by consent of parties, to wit:

Present: A. M. Aiken, counsel for def't-.
J. P. Harrison & B. Green, counsel for pl't'ffs.

J. D. BLAIR, being first duly sworn in due form of law, deposes & says:

Interrogatories by d'f'ts' counsel.

1st Quest. State your age, residence, & occupation.

Age, 48; residence, Danville, Va.; occupation, real estate & insurance business.

2nd. Have you resided in Danville all of your life; &, if not, where did you reside before you came here?

369 I have not. I resided in Pittsylvania county, Va. (where I was born), until about 6 years ago, when I came to Danville, save a short time I resided in Georgia.

3rd Quest. While you were a resident of Pittsylvania Co., Va., did you hold any public office; &, if so, what & for how long a time?

Yes, sir; I was sheriff of Pittsylvania for awhile and was treasurer of the county for nine years. I was deputy sheriff for five or six years.

4th Quest. Do you know James R. Millner, one of the defendants in this suit?

Yes, sir.

5th Quest. State where he was born, where he has resided all his life, the opportunity you have had of knowing him, & the character of his occupation during your acquaintance with him.

I don't know where he was born. I first knew him about 30 years ago. He then lived at his father's, in Pittsylvania Co., Va., near the Henry line. I had transactions with him as

370 deputy sheriff & as sheriff. He has been engaged in the tobacco business since I knew him—manufacturing tobacco; has resided most of the time in Pittsylvania Co., Va., & in Danville for a short time. I have occasionally visited his father's house & have been at his house.

6th Question. Were your business transactions with him numerous or few & over what period of years did they extend?

I cannot say that they were numerous; they were occasionally, once or twice a year or oftener, as I might have occasion for the collection of taxes or his connection with business in court, & this extended over a period of at least 25 years, down to about a year ago.

7th Question. Did you have a business transaction with him about a year ago?

He conferred with me on business about a year ago.

8th Question. The question is, Did you have a business transaction with him about a year ago?

Mr. Millner consulted with me about business transactions

371 about a year ago. The date can be fixed by ascertaining the time he took a trip to Philadelphia with Mr. J. Howard Estes. I did not actually transact any business, but simply advised him upon the business upon which he talked to me about. The firm of Ruffin, Blair & Dance, of which I am a member, had been transacting business for him for the last year or two, up to about that time, but I don't think any actual business was transacted by me on that date.

9th Quest. Did he wish you to transact some business for him or with him at that time?

In addition to the advice that I gave him, he wished me to agree to transact certain business for him in the future & he wished one member of my firm to transact some business for him then. He had various business which he wished my firm to attend to.

10th Quest. Was the business he wished you to transact in the line of your occupation?

372 It was in a line of a class *of a class* of business I have done a great deal of. Not strictly in the line of the business of my firm, but a class of business that I have attended to at various times, & he wished my firm to attend to business strictly in their line.

11th Quest. Was it or not business of importance & did you not refuse to transact it?

I refused to transact a portion of it, & expressed my opinion freely to one membe- of my firm about the propriety or impropriety of attending to the business he desired us to do. I agreed to comply with a personal request he made of me. I do not say that all this occurred exactly at the same time, but it was a short time prior to the date above fixed. It was very important business.

12th Quest. During the period of 25 years when you had transacted business with him before the time specially in question, had you refused to transact any business with him?

I had not.

13th Quest. Why did you refuse it on that occasion?

373 I did not think Mr. Millner capable at that time of attending to business.

14th Quest. Was that the earliest period at which you doubted his capacity to attend to his business?

Some short time prior to that I had observed & I thought Mr. Millner's mind was failing, & I thought at that time that it had increased. The idea intended to be conveyed is that I had observed some change in his mind prior to that time, but that it had increased in capacity.

15th Quest. State anything you heard him say or saw him do which caused you to think his mind was failing & that he was incapable of attending to his business; also state whether you saw & talked with him frequently or not about that time.

His conversation with me at that time and about that time were very lengthy and a great deal of it repetition. He talked about his neighbors and sometimes about his family, & his general

374 conversations seemed to be very much at random. He seemed to be very uneasy about something that Dr. James was doing or about to do. He seemed to have some fear of not being safe in his person & property in his neighborhood. He seemed to be very much dissatisfied with a former will which he said he had made. He seemed to fear very much that one of his daughters would marry against his will, and I did not tax my memory with a great deal that he said. I remember another thing he said. He was very much disturbed as to whether he should stay where he was or come back to Danville, from which place he had moved but a short time, and he was very desirous, in some of his conversations about that time, to make another will. His conversations about that time were so much of a repetition & so lengthy that I dodged him sometimes. He sought frequent interviews, & I finally went to one of his friends

& family connections & told him I thought something ought
375 to be done for him; that he was so troublesome, or words to that effect, that I didn't see how we could get along with him; that he occupied too much of my & my firm's time.

16th Q'st. What did he say about Dr. James, & was James one of his neighbors?

I cannot recollect near all that he said about James. His complaints were very numerous about him. He was one of his near neighbors & had been ever since I had known him, but he seemed to fear that James would do him or his property some great harm. I remember to have told him that himself & James had been living in that same county for a long time, ever since I had known them, & that these things did not trouble him in former days as they seemed to now, & that I attributed it to his nervous condition. I therefore did not pay much attention to the special charges he made.

17th Q'st. Were his fears of James well founded or not?

I had been in that neighborhood but little for the past 6
376 or 7 years, but I know of no reason why he should fear James more at that time than formerly. A great part of his conversation was an appeal to me about James, about what I knew about him and about what he had been doing all his life, & talking over matters which he said were familiar to me, he knew, from my knowledge of that country. Therefore it was that I told him what I have above stated, that these things formerly did not trouble him so much.

18th Q'st. Do you know whether the members of James' family visited Millner's?

I know that Mr. Millner said that one of his sons visited his house. I know nothing of my own personal knowledge.

19th Q'st. Did Millner, in the conversation with you, express any fear of that son?

He did not express any fear of hurt from that son; his fear was that that son would marry his daughter.

20th Q'st. Did you or did you not regard all of these fears as mere delusions?

377 (This question is objected to until it is shown that the witness' opinion called for comes within what the laws of evidence requires in such cases, & that he is competent to give such opinion as evidence.)

I had no opinion at all as to James' son marrying his daughter, as I know nothing about it. All the others I regarded as mere delusions.

21 Qu'st. How often did Millner converse with you at the period referred to?

Just prior to this time—I would say within 60 days—he had frequent conversations with me of considerable length. I don't remember the number, & just about that time he was here in Danville, sought interviews every day and sometimes twice a day. I did not always accom-odate him.

22 Qu'st. Were his conversations always upon the same subject?

Very nearly; sometimes they were different, but a great portion of them were repetitions.

23 Qu'st. What did he say of the members of his family to whom you have alluded?

378 He seemed to think that his brother, Mr. Jno. P. Millner, was seeking to get some advantage of him by getting him or trying to get him to go into business with him, and that he had made a will which he desired to revoke because in it he had left considerable power to his brother John & a provision by which John was to carry on business after his death, in connection with his wife, & he seemed in some way to connect John with Dr. James in the efforts to injure him. I do not say whether it was a conserted action or not. I have stated what he said about his fears of the marriage of his d-ughter. He also stated that John had put out a report in the neighborhood in which — believed that he was deranged & had written to Dr. McGuire about it & had shown him Dr. McGuire's reply to his letter.

24 Qu'st. What impression did the conduct & conversation of Millner make upon you?

(Same objection as heretofore made to question No. 20.)

379 It induced me to believe that his mind was unhinged or that he was deranged, and I was so much impressed with it that I went to Mr. J. Howard Estes, whom I knew had married a relative of his, & informed him that I believe- that Millner ought at least to be sent to some private asylum for treatment, & that unless some of his friends attended to it, if he kept on troubling me, that I would have to take some steps to get rid of him myself, or words to that effect.

25 Quest. Are you able to lay before the commissioner anything about Millner's appearance, conduct, & conversation which induced you to — your opinion just given?

No, sir; I am not, for I don't recollect much that he said & done, as he talked a good deal of what I regarded as nonsense. He talked about some things that men do not ordinarily talk about, even to their most intimate friends, & had various propositions & plans about renting out his city property & disposing of his country property, the details of which I cannot now remember.

380 When compared with conduct and reason of men generally was his behavior and speech rational or not?

I do not think it was.

Cross-examination by J. P. HARRISON:

27 Qu'st. When did Mr. Estes take his trip north with Mr. Millner?

I cannot precisely recollect. I have just had a conversation with Mr. Estes & he says he thinks it was last March.

28 Qu'st. Has not Jas. R. Millner been all his life, since you have known him, disposed to talk rather loosely & incoherently?

I do not think so. While he may have talked a little freely at times when excited he generally talked intelligently.

29 Qu'st. Who was the member of your firm referred to in answer to question No. 9, & what business did Millner desire him to attend to?

W. N. Ruffin was the member of the firm, & Millner wanted the firm to rent out his city property, & I think his country property had been in our hands for sale for some time—a portion of it, at
381 least. He also wanted Ruffin to go with him to Philadelphia & to go with him to a private asylum.

30 Quest. What was the personal request made of you to which you complied?

That I would be executor to a will which he proposed to make & would look after his business in the event of his death, or in the event of an improvement in his health that I would aid him in advising him about his business, & that perhaps he might want me to make some investments or to look to his business.

31 Quest. Did he not know that you had often acted as personal representative with satisfaction to the parties conserned?

I think he did. I transacted similar business about 3 years ago for his brother, J. T. Millner, who died, & am still his personal representative. His family have been personal & business friends of mine.

32 Quest. Are you not a party to the suit of Hoffman, Lee & Co. *vs.* Millner & *als.*, as administrator of said J. T. Millner?

I think I am.

382 33 Quest. Do you not know that the proposed will was subsequently made by Jas. R. Millner & drawn by Mr. R. W. Peatross?

I know this, that I went to Mr. R. W. Peatross & informed him what Mr. Jas. R. Millner's desire was, that I should be executor of his will, & I was informed the will was prepared. I know nothing of its provisions.

34 Quest. Do you know, of your own knowledge, that what Millner said of Dr. James was not true?

I do not.

35 Quest. Have you any expert knowledge of insanity?

None whatever.

36 Quest. Do you know that Jas. R. Millner did not have good reasons to doubt the advisability of business relations with his brother John and to desire to change a will in which he had given him large powers?

I do not know.

37 Quest. Was not Jas. R. Millner at that time comparatively much better off than Jno. P. Millner, & the former being in weak health might not there have been sensible reasons for his objections to such relations?

383 I can only give an opinion as to wealth. My opinion is that Jas. R. Millner was better off financially than Jno. P. Millner, & he may have had good reasons for not giving John such large powers; but about this I do not know.

38 Quest. Did you not know that Jas. R. Millner was at that time suffering from disease of the kidneys in an advanced stage?

I did not know what special disease he was suffering from. I knew he was then & had been in bad health for a good long time, & that the disease, I thought, affected his nervous system very much. He talked to me about having Bright's disease of the kidneys.

39 Quest. Did Millner mention the matters you have referred to indiscriminately & freely to any & all persons or to you & persons in whom he reposed confidence as he did in you?

I do not know. I have no knowledge of his mentioning
384 them to any other person except some of them to Mr. Ruffin, & I have heard Mr. Estes say he mentioned some of them to him.

40 Quest. Did he mention to Mr. Ruffin the "some things" that men do not "ordinarily talk about, even to their most intimate friends," spoken of in your answer No. 25?

Not that I know of.

41 Quest. When talking with him were others present or did he confer with you privately?

Privately, as a general thing. He was frequently sitting about in the office, but generally consulted me privately.

42 Quest. Were you ever interrupted by persons coming in during such private consultations?

I cannot remember. I think it likely I was.

43 Quest. Did he, if ever such was the case, speak as freely & fully to you in the presence of others as when you were by yourselves?

I think that when he sought private interviews with me he desirred them to be strictly private.

44 Quest. Did not Millner, from your general character in
385 the community and from his personal relations to you, have reason to impose special confidence in you as a friend & adviser?

I think he did.

45 Question. Did he ever mention to you any business or unsettled matters between himself and Hoffman, Lee & Co.?

I don't recollect that he himself ever did.

46 Question. When did you first hear from any sourse that any such unsettled matters stood between him and Hoffman, Lee & Co.?

(Objected to because it is not pertinent to anything contained in the examination-in-chief, & because it presumes that the witness had received information which he has nowhere said was in his possession.)

Some time within the last 12 twelve months. I cannot fix the date.

47 Question. From whom did you hear any such?

(Objected to; same objection as above.)

From Mr. R. W. Peatross, & then from W. N. Ruffin.

48 Question. Did James R. Millner, in these interviews
386 spoken of by you in your examination-in-chief, tell you what property, real & personal, he had and whether he had any cash; &, if yea, how much & who had it?

(Same objection as above; &, further, because James R. Millner at the time this question refers was a lunatic, of unsound mind.)

I think in some of the interviews he undertook to tell me all about his money matters, & I think told me where his money was & from whom he expected to receive other monies. His money was at W. S. Patton's Sons & Co., & I think he expect- to receive some from sales of tobacco made by a Baltimore commission merchant. I think it was Stafford, but about the name I am not sure, & he talked with me generally about his real estate. I knew pretty well about what real estate he owned.

49. Did he recollect what real estate he owned & seem to apprehend how it should be cared for?

I think he did. He had a very clear idea of what he
387 owned. I don't think he was deranged upon that subject, in knowing what he owned.

Re-examination by A. M. AIKEN:

50 Quest. At the time he wished you to be the executor of his will was it your opinion that — was capable of making a will?

I do not think he was.

(Question & answer both objected to by pl't'ffs' att'y.)

51 Quest. Why did you consent to be the executor?

I wanted to pacify Mr. Millner's mind; to quiet him. I informed Mr. Peatross that I didn't think his mental condition was such that he could make a will.

(Answer objected to as to opinion.)

And further this deponent saith not.

J. D. BLAIR.

Witness:
F. F. BOWEN, *Com'rr.*

The witness, Dr. L. E. HARVIE, being first duly sworn, deposes and says:

By A. M. AIKEN:

52 Quest. State your residence & occupation.

Residence, Danville, Va., & physician by profession.

388 53 Quest. State whether you know Jas. R. Millner, a defendant to this suit.

Yes, sir; I know him.

54 Quest. How long have you known him, and have you ever practiced upon him as a physician?

Ever since he moved to Danville. I think it was about 1880. I have practiced upon him as a physician. I was his family physician when he lived in Danville.

55 Quest. Do you know whether he has any disease; &, if so, how long has he had it?

He has had Bright's disease of the kidneys, to my knowledge, ever since 1883. I don't know how much longer.

56 Quest. State whether you have conversed with him frequently or not within the last two or three years & the general character of his conversation, what he said & done, & the opinion you formed of him from what you saw & heard.

I have conversed with him frequently. I have been up to his house to see him & he has been down here to see me fre-
389 quently, to see me professionally. The general character of his conversation has been about his disease. He told me very frequently about Dr. James & his son. Both were anxious for his (James') son to marry his (Millner's) daughter, & that young James persisted in coming there when he had said he did not want him to come, & that his brother insisted upon going into partnership with him so that he could take what he had, and there wasn't any evidence that he could give to substantiate this delusion. He would repeat the same questions over & over again, when he would receive the same reply, & apperently he would forget that he had asked the question. I was decidedly of the opinion that his mind was unbalanced upon a great many subjects and that his condition was due to Bright's disease of the kidney- & the abuse of whiskey & venereal excesses.

57 Quest. Was there any special subject upon which he persisted in talking to you?

390 Thoes two subjects referred to above seemed to occupy his mind. He also would insist that I should tell him what doctor to go to — cure him. Later, when I conversed with him, his conversation was upon the subject of religion. He said he wanted to do what was right, & that God would take care of him. The last time I saw him he avoided me & seemed unwilling to have any conversation with me on any subject. I have seen him once since. He merely said "Good morning," and passed on.

58 Quest. Had he any reason for shun-ing you?

Not that I know of. I suppose he thought I was going to do him like thoes other people.

59 Quest. What other people?

Dr. James & his own brother, Mr. Millner.

60 Quest. Did he say how Dr. James & his brother, Mr. Millner, had been doing?

He said Dr. James wanted his son to marry his (Millner's)
391 daughter, & that his brother wanted to go into partnership with him in the tobacco business so that he could get what he had, & that he was very averse to going into the tobacco business with him.

61 Quest. Was there any delusion of mind besides thoes you have mentioned from which he suffered?

I can't recall at preseat. I kept no notes, & when I did have conversations with him he bored me so I was always anxious to get away from him as soon as possible. He would go over the same ground again & again every time I saw him.

62 Quest. Did you ever hear him say that Dr. James had any designs upon his life?

Yes; I have. He said not only—Dr. James & his son both were anxious to get rid of him so that they could get his daughter.

63 Quest. Was his conduct and language during these conversations rational or not?

He apperently believed everything he said, but he didn't
392 have evidence to substantiate his belief.

64 Quest. From what you saw of Millner & heard him say what is your opinion of his mental condition at the time?

That his mind was unbalanced & that he had insane delusions.

65 Quest. At what time did you first discover that his mind was unbalanced & that he had insane delusions?

Some time in the early part of 1884. I can't say exactly what time. I discovered that he had Bright's disease before I had suspected that his mind was unbalanced. I believe now that his mind was weakened by venereal excesses & the use of large quantities of alcohol before I discovered that he had Bright's disease, although I did not suspect it at the time.

Cross-examination by J. P. HARRISON:

66 Quest. Are you an expert upon insanity? If yea, please state the extent of your practice upon insane patients.

393 I don't pretend to be an expert upon insanity.

67 Quest. When did you last see Millner?

Just before he was carried to the insane asylum.

66 Quest. (*sic*). Why do you say that Millner's objection to Dr. James' son as a suitable match for his daughter and the impression of his that he believed both Dr. James & his son wished he was dead were insane delusions?

Because he would give no reason for his belief when I asked him what reasons he had.

67 Quest. (*sic*). Is the unwillingness of a man who has means to go into business with a brother of less means an insane delusion?

(This question is objected to because it assumes as a fact something which hasn't been proven.—A. M. Aiken, for def't-.)

Ans. Not taken by itself. I considered that an insane delusion on the part of Millner that his brother wanted to go into partnership with him for the purpose of taking what he had when he had no facts to sustain the opinion.

394 68 Quest. (*sic*). How do you know that Jas. R. Millner had no facts which naturally he might not have been willing to disclose to make him distrust his brother John?

I don't know that; but I asked him if he could give any reason why his brother John wanted to cheat him out of his property. I knew nothing whatever of any business relations between them at that time, & I tried to disabuse his mind, because I thought he had a groundless fear of his brother, purely in the interest of peace and good will between the brothers.

69 Quest. (*sic*). Are you acquainted with the general character of Jno. P. Millner, his brother, & with the relations & transactions between

these brothers sufficiently to say that such an opinion, whether held by James R. Millner or *ther (sic)*, was an insane delusion?

I know nothing whatever of my own knowledge of the relations between them, & that time I had never heard that there had
395 been any business transactions between them. I thought that *his* mistrusted his brother without a sufficient cause, & I thought I would do what I could to bring them together.

70 Quest. Did you know that there was any cause for his distrust, of your own knowledge?

I did not know & never heard anything whatever about his relations with his brother at that time.

71 Quest. What were the insane delusions spoken of by you in answer to 64?

1st, that Dr. James & his son wanted to kill him, so that Dr. James' son could marry his daughter, and his brother wanted to go into partnership with him to take all he had.

72 Quest. Did James R. Millner speak to you of any matters between himself and Hoffman, Lee & Co.?

(This question is objected to, for the reason that it is not pertinent to the subject of the examination-in-chief, by A. M. Aiken, att'y for def'ts, & because the speech of Jas. R. Millner upon any sub-
396 ject was made when he was an insane man.)

I can't recollect that he ever did. I don't think he ever did.

73 Quest. Have you not been his family physician for the past five years?

While he lived in Danville I was, & he always consulted me about himself up to the time he went to the Buffalo Springs, last summer.

74 Quest. Did you not often go up to his country place & spend the night there?

No; I went only once.

75 Quest. When was that?

11th of August, 1884.

76 Quest. Did he converse much with you on that occasion & on other occasions when you went to see him?

Yes; he wore me out talking about Dr. James & his son & his brother.

77 Quest. Did he talk sanely on any subject?

Yes.

78 Quest. Define an insane delusion.

I am no expert on insanity. When a man takes up an opinion without any reason that he can give for it, & as far as
397 you can see without any reason in it & unsupported by any facts, I consider that an insane delusion.

79 Quest. That seems to be a correct deffinition. Now, can you name any opinion that Millner entertained for which he did not have any reason (not expressed to you), but did not have, to your knowledge, any reason for it & which you knew to be unsupported by any facts?

As far as I know, of my own knowledge, he did not have any facts to support it.

80 Quest. Do you know that Dr. James & his son did not want that son to marry Millner's daughter?

I know nothing whatever on the subject. All that I ever heard upon the subject I heard from Mr. Millner.

81 Quest. Can you say, then, that Millner's belief that they did wish the son to marry his daughter had no foundation in fact, but was a mere insane delusion, such as you have described?

398 What I considered the delusion was that they wanted to kill him so that Dr. James' son might marry his daughter.

82 Quest. Can you say of your own knowledge that there were no facts known to Millner to justify his suspicion that they wanted to kill him?

All I can say is that he could or would give me no reason when I asked him why he thought they wanted to kill him. He seemed actually to fear that they would kill him if they got a chance.

83 Quest. Was it not Millner's notion rather that these people wished to get rid of him so as to get him out of the way as an obstacle to the marriage, & did not he seem to conclude from that they would kill him to accomplish their purpose?

He seemed to think that they decided to kill him & after he was out of the way to marry his daughter, whether she was willing or not.

399 84 Quest. Was not Millner for some time before you discovered these erratic notions a subject of deep religious impressions & convictions, & did not these impressions tend to drive his thoughts towards death and a future life?

At this time, about July & August, 1884, he seemed to have no more idea of religion than if he had never heard of the subject.

85 Quest. Do you know when his mind was first turned towards religion?

I do not.

86 Quest. Did he never talk to you on that subject?

He did after he returned from Buffalo Springs last summer, 1885.

87 Quest. Did Millner talk rationally on all other subjects except his brother & the intentions of the Jameses as to his daughter?

At all times he did not.

88 Quest. On what other subject did he talk irrationally?

400 He was an erratic talker about the change of his residence from the country to Danville. He would tell me he was coming to Danville in a few weeks to take up his residence here for the purpose of educating his daughters. He said it cost him so much to educate his daughters at Staunton. The next time when I saw him I would ask him when he was coming down. He would say that he had given up the idea. This occurred again & again.

89. Was he not at all times during your acquaintance with him a wild & incoherent talker?

He was rather wild occasionally. At other times he talked as rational as any one.

90 Quest. Do you not believe that his mental troubles were the direct result & outgrowth of the disease for which you have mentioned you treated him?

I believe now that his mind was impaired by venereal &
401 alcoholic excesses before I discovered he had Bright's disease.

His mental impairment was not noticed by me when I first discovered he had Bright's disease.

91 Quest. Was not Bright's disease a result of the excesses alluded to & does not that disease tend to impair the mind?

Excesses of eating badly cooked food & drinking immense quantities of whiskey were the main causes of Bright's disease in his case. In my opinion Bright's disease frequently causes insanity, & I believe that the Bright's disease is the main cause of Mr. Millner's insanity.

Re-examination by A. M. AIKEN, att'y.

92 Quest. Were the conversations had with Millner introduced by him or you?

Thoes conversations about Dr. James & his brother were always introduced by him. I wouldn't have said a word to him on that subject for five dollars.

93 Quest. What was his manner & temper during these conversations? Did he seem to be in earnest?

402 Always in earnest—in dead earnest.

94 Quest. During your acquaintance with Millner as his physician in what mood was he generally?

He was always in a good humor with me & very often in a bad humor with other people.

95 Quest. Were his habits restless or quiet?

Restless.

96 Quest. Have you ever noticed the house & its surroundings in which he lived? If so, state if there was any peculiarity of taste or style about them.

I think any man who will look at his premises would be decidedly of opinion that they were contrived by an ec-entric man. He built his dwelling-house right behind his factory & had his stable & cornhouse and horse lot all fenced in seperately, and several more lots besides—the number I don't recollect—and so arranged that you had to unlock every gate to go from one to the other, & frequently to unlock two or three locks to get into one of them, & then he
403 kept his stable locked inside of these enclosures, & all of these different gates were locked every night & morning & remained locked during the day. This was the case the day I was there—11 Aug., 1884—& he told me he always kept them so locked.

97 Quest. Do you know what the general opinion of Millner's neighbors & acquaintances has been since 1884 as to his sanity?

(Objected to as heresay.)

I never heard any one of his neighbors express an opinion on the subject.

98 Quest. Do you know what the general opinion of this community (Danville) as in regard to his sanity?

(Objected to as hearsay & otherwise illegal.)

I have not heard much expression of opinion on the subject. I have heard a few people express the opinion that he was crazy.

(Answer objected to.)

And further the deponent saith not.

L. E. HARVIE.

Witness:
F. F. BOWEN, *Com'r.*

404 Continued until to-morrow, at 10 a. m.

F. F. BOWEN, *Com'r.*

Continued from day to day until 22 Febr'y, 1886.
Present: A. M. Aiken, for def'ts. Present: B. Green, for pl't'ffs.

The witness, Dr. W. A. TROTTER, being first duly sworn, deposes and says:

99 Quest. State your name, age, place of residence, & profession.

Name, W. A. Trotter; age, 60 years old; reside in Pittsylvania Co., Va.; profession, physician.

100. How long have you resided in Pittsylvania Co., Va., where did you receive your medical education, & how long have you practiced medicine?

I was born in Pittsylvania Co., &, with the exception of 6 or 8 years that I resided in Georgia; while a youngster I resided in Henry county; with thoes exceptions, I have always resided in Pittsylvania county. I received my medical education at what is
405 now known as the Virginia Medical College, then the medical department of Hampden Sidney College. I have been practicing since 1852, except two years.

101 Quest. Do you know the defendant to this suit, Jas. R. Millner? If yea, state how long you have known him, whether you are related to him, & how far you reside from him.

Yes, sir; I know him; have known him from infancy up to the present. I am related to him. He is the son of my half sister. At present I reside about two miles from him & have for the last 6 or 8 years.

102 Quest. Have you seen him frequently or not during your life & his life, & have you had occasion to take special notice of him?

Yes, sir; I have seen him very frequently, & I reckon have observed him as closely as most people.

103 Quest. Are you intimate or friendly with him or not?

Yes, sir; as intimate as men generally are. Part of the time I resided some distance from him & did not see much of him.

104 Quest. Did you ever practice your profession in his
406 family & upon him; if so, how long?

Ever since I have been a practicing physician, with the exception of the period I spoke of, while I was in Georgia.

105 Quest. Have you studied the subject of mental disease in the course of your professional life?

Not specifically or specially; only as other diseases, generally.

106 Quest. Have you studied it at all; &, if so, to what extent, in comparison with other subjects of your profession?

I hav'n't given any more special attention to that than to other branches of the profession & probably not so much, as it is a disease that don't come under the treatment of physicians generally as others do. I have studied it to a certain extent.

107 Quest. In the course of your practice have you seen much of people with diseased minds?

Only to a limited extent. I hav'n't seen much, but I have seen some.

108 Quest. Are there any peculiarities about James R. Millner which distinguished him from ordinary men?

407 Yes, sir; there is something peculiar about him. Acquaintances are generally in the habit of calling him "queer" or "singular;" those are the expressions generally applied to him.

109 Quest. Will you state anything which you have heard him say or seen him do which you consider queer or singular?

He was queer or singular in doing & acting differently from what most people would in most everything he did. I couldn't go on and detail the specific actions or sayings. I could state his peculiarity about building, about the management of his stock, the management of his household, in his dealings with men generally.

110 Quest. What was there peculiar in his building?

His peculiarity consisted in an arrangement about his buildings that nobody else seemed to approve or approbate; this peculiarity in building consists in this, the various divisions or very singular subdivisions by which his entire building lot was laid off; it is

408 enclosed with a plank fence—the entire lot, orchard, garden, & all, the enterence to which is by subdivisions, the number of which I cannot tell. There are three of these subdivisions you pass through in getting to the residence from the road. All have large, heavy gates, & these — from the left. On entering from the road there are several subdivisions to stables—crib, dry-houses, ice-houses, &c. The entrance to all these various divisions is through large gates, to which he has lock & key attached, & these gates he required to be locked nightly. He generally sent one of his sons or locked them himself, & these keys, together with all his outhouse keys, were generally carried into his chamber & locked up in a case. In these various departments (?) *sic*) he had little trap-doors that his dog might pass from one to the other, & he kept a very severe, savage dog.

111 Quest. What was the reason for locking all these gates? Were the premises made safer or not by it?

409 He said it was for protection. He was apprehensive of danger. I don't think there was any grounds for apprehension. If there was any reason to apprehend any danger they were made safer.

112 Quest. Did Mr. Millner apprehend that there was any danger which you and others did not apprehend?

He professed to be apprehensive of danger. That was his reasons for such precautions as assigned by himself.

113 Quest. Did you or any one else in your hearing speak to him about these divisions & gates; &, if so, what would he say?

Yes, sir; I spoke to him myself & heard others call his attention to the peculiar style of building which he adopted, & his answer invariably was that was his business & not theirs.

114 Quest. In your opinion, was there any reason for these different divisions, gates, & locks about his premises?

No, sir; I didn't see any reason for as many as he had, for
410 a country residence at least.

116. [No. 115] (*sic*). Did any building stand between his dwelling-house and the public highway?

There is a building standing on the right & on the left, with a passway between, about 5 steps apart.

117. What peculiarity was there about his management of his stock?

It consisted in this: a particular place was assigned to every animal & it had to be there, & if it was not in its place there was trouble; & then he had a peculiarity about feeding that stock; it must be fed at certain times, in a certain way, & in certain quantities, the feed for which he would generally measure out himself.

118. What was there peculiar about his dealing with men generally?

He had a very peculiar way about dealing with men around the neighborhood; I know nothing about outside; that was he prescribed his own terms, always wrote his own contracts, & a
411 compliance with these were demanded or no trade. He did not trade on the princip*al* of "give & take" at all.

119 Quest. What was there peculiar about the management of his household?

His peculiarity in that was that he assumed the entire management of it himself & devolved none of it on his wife, even to the selection & purchase of all dress goods, male & female.

120. Have you been to his house frequently or not? If you have, state anything about his conduct or speech or habit that you recollect.

I have been there frequently & have heard a great deal said. I have heard him say a great many things about business & about various persons. It would depend upon the humor I would find him in what he said, whether disparaging or the contrary, of the person or thing he might be speaking of. As to persons *as to persons*, sometimes he would speak very favorably of & claim that they were his very best friends; then again of these same persons
412 he would say that they were his bitterest enemies, & that their sole object was to accomplish his ruin. I'll say, for instance, I've heard him speak of Dr. James & say that he believed that he was seeking an opportunity to take — life, & that he lived in continual dread of Dr. James & the radicals by which he was surrounded. I've heard him speak of his brother John pretty much to the same effect. At one time he would say that his brother John

was his dearest & best friend, & very shortly afterwards I've heard him speak of him as his worst enemy, & that his sole object was to get possession of what he had for his own use & let him & his own family go to the poor-house, & I've heard him make the same statement in regard to Mr. R. C. Payne, his brother-in-law. I have heard him make similar remarks about various other people in the neighborhood.

121. Was he happy & contented in his home or not?

413 I can only answer that by saying at times he seemed to be & at others he did not. I would state, as my belief, that he was generally as happy as a man of his disposition and temperament could be.

122 Quest. What was his disposition & temperament?

His temperament was what is known in medical definitions as a sanguine temperament. He was very selfish in disposition.

123. What do you mean when you say that he was as happy as any man of his disposition & temperament could be?

I mean a man of his disposition & temperament is not likely to be happy with any surroundings at all times, being selfish, exacting, & intolerant of the rights of others.

124 Quest. Did he have any peculiar habits which he practiced before sitting down to his meals?

He had the habit of closing & locking all his out-doors.

125. Why was that? Did you ever speak to him about it?

414 I have. I called his attention to *to* it repeatedly & asked the reason of his doing so, & he always answered that he didn't know who might be prowling around & coming in & what injury they might do him.

126. Did he have a fear that some one had designs upon his life?

He so stated.

127. State if you know whether he ever thought that some one was in the house to kill him & what he said & done.

Yes, sir. I have heard him state on more than one occasion that he thought somebody attempted to break into the house at night to kill him. When he made that statement to me I undertook to show him the unreasonableness of the thing, but he maintained that it was so & said that somebody was trying to break in at the front door, & that when he roused up & began making a noise, calling for his weapons, that they left the door & he heard them pass down the steps.

128. Was it a fact that Dr. James desired to kill him & that

415 some one did try to break into his house for that purpose?

I don't think so.

129. How did you regard these fears or apprehensions, as facts or delusions of his mind?

I don't consider them facts. I regard them as delusions of the mind.

130. From what you have seen of James R. Millner, was his action and speech prompted generally by reason & motive or caprice & humor or passion? I don't mean through the whole of his life; you can limit the time to your knowledge.

For several years past I think his action has been prompted altogether by humor, caprice, or impulses or something of that kind, and my reasons for believing so are that frequently I called his attention to certain actions to know why he did so & he never did assign any reason or give any cause, but generally said that that's the way it looked to him. I will illustrate by something I've already said. For instance, at the time that he fell out with his
416 brother, in talking with him on the subject & trying to show him that there was no reason for his belief, his only answer would be that he couldn't see it otherwise, & in a few days afterwards, without any reason or cause, he became reconciled to his brother & said that he was the only true friend he had, and his actions towards his brother-in-law, R. C. Payne, was of like character. I can state that towards myself, & think I can say with propriety I was one of the best friends he has, he became very bitter and hostile, without any reason or cause & only on the supposition of a fancied injury, &, I suppose, remains so to-day. I have not seen him since. The same thing has occurred in relation to his whole family—his brothers and sisters.

131. What is your opinion of the mental condition of James R. Millner, based upon what you have seen of him for the last four or five years?

(This question is objected to because Dr. Trotter has not
417 been proved to be an expert in matter of insanity.)

I don't believe he is of sound mind.

132. At what date would you fix the unsoundness of his mind?

I couldn't locate the date. I don't think he has been of sound mind for several years past. I think it has been gradually developing, but at what time it commenced I am unable to say.

133. Is it not your opinion that as late as one or two years ago he was capable of understanding the meaning & effect of what he did & said?

I don't think he was, sir.

Cross-examination by B. GREEN:

134. Has not James R. Millner always been a very systematic man in the management of his business?

He has been so regarded.

135. When did you first come to the opinion that he was of unsound mind? I mean you to say when this opinion first occurred to your mind.

It has been several years ago; between two & three years ago.

418 136. What facts then occurring gave rise to this opinion?

The condition he was in and the manner in which he was acting at the time.

137. What was his condition & what acts was he doing?

At the time spoken of he was under my charge, & there is no act that took place at that time that seemed to be the result of reason or

reflection, & everything he did or said seemed to be of an impulse altogether.

138. State what you were treating him for & some one or more acts which he did showing an unsound mind.

He was under treatment for Bright's disease of the kidney-. The answers I have heretofore given I detailed some that I regarded as evidence of an unsound mind, & at the time spoken of I called the attention of his nearest relations—his brother & brother-in-law—to his condition & suggested to them the propriety of taking some
419 legal steps by which his estate & business could be placed in the hands of some proper person for the reason that I believe that he was incompetent to manage them himself, as was evident to me from the change in the manner of doing business, & his impulsive way of acting would result in the wasting of his estate, & in that particular my attention was first called or directed particularly to his mental condition, &, in addition to that, the change in his general deportment & acts evidenced to me that he was mentally incapacitated for the transaction of business.

139. Do you mean to refer — his fears about Dr. James killing him and his distrust of his brother John and brother-in-law Payne and anger against yourself to that period?

Not at the period I spoke of above when I called their attention to his incompetency to attend to business. The James matter was subsequent to that some 6 or 8 months.

140. State distinctly when these fears of Dr. James & suspicions of his brother-in-law & anger against yourself first showed themselves.

420 I couldn't state the exact point. It was the latter part of year before last & the first part of last year.

141. When did you cease to attend him?

When he went to Buffalo Springs the last time.

142. In what particular matter did his distrust of his brother John show itself?

It occurred in this way: I had endeavored for a long time to get him to agree for some one to take charge & manage his matters. At this time he concluded to give it up to his brother John to manage, about which I knew nothing until he told me himself, & he went on then to tell me what he had done; that he had given up everything to John, who, he said, would take as much interest in it & do as well by it as he would if he was well. I don't think it was more than two weeks after that, if that long, when he became dissatisfied & went on to make to me the statements I have heretofore
421 made. He had made a will, & in that will he had left John, his brother, in connection with his wife, the administrator & administratrix.

143. Now, can you not say when this will was made—whether before or after Millner went to Buffalo Springs? If before, how long before?

It was made before he went to Buffalo Springs. I cannot say how long before.

144. Do you know whether his desire to change his will and take

his business from his brother John arose from a suggestion from his daughter?

I don't know anything about it.

145. What reason did he assign for thinking Dr. James wished to kill him, & what motive did he attribute to Dr. James?

I never heard him attribute any particular motive at all. I never heard him assign any reason at all.

146. Did not James R. Millner continue to attend to his affairs and manufacture tobacco after the time you thought him insane?

422 He manufactured one stock one year.

147. What year was that?

I reckon it was year before last. It may have been the year before that.

148. Did he not manage it successfully, and have you ever know him to waste his money except in the excentric buildings of which you have spoken?

I don't think he managed it successfully. I can't say that I know of his wasting money, because I did not know of his spending money beyond that.

149. Has he not made more money manufacturing tobacco than his neighbors & brothers in the same business?

I don't know.

150. Has not J. R. Millner always been regarded by his neighbors as a peculiar man in the management of his business, & was he not always very intolerant of advice?

Yes, sir.

151. Has he not succeeded in his business, and have not
423 his neighbors in the same business lost money?

That is the general belief, that he succeeded. As to the loss of his neighbors I don't know.

152. Did you ever hear James R. Millner speak of his indebt--ness to Hoffman, Lee & Co.?

(This question is objected to because any speech made by James R. Millner was that of an insane man.)

No, sir.

Continued until to-morrow at 9 a. m.

COM'R'S OFFICE, 23 *Feb'y*, '86.

Present: A. M. Aiken, for def'ts; James P. Harrison, for pl't'ffs.

Continuation of cross-examination of Dr. TROTTER:

153. When did he make the peculiar buildings about his residence in the country?

It was the time he had the buildings erected, in 1880 or 1881, to the best of my recollection. It may have been in 1882. I cannot say positively.

154. Was it before or after he gave up his residence in Danville?

424 It was about the time he had these buildings erected to move from Danville; he remained in Danville while they were building.

155. Was not the house & lot he owns on Paxton street, in Danville, & in which he lived until he moved back into the country also fixed up peculiarly—that is, rather differently from what is customary, with a small house on the right & left of the walk-way & immediately in front of the main residence, & other peculiar structures?

I don't know anything about the arrangement of his Danville property.

156. When did you last see him?

It was some time last summer when on a visit here from Buffalo Springs.

157. Did not Millner fail in business absolutely in 1873?

I was in Georgia at that time & can say nothing of my own personal knowledge.

158. Can you state any occasion when Jas. R. Millner was
425 not apparently able to make a bargain, recall his money transactions, & know how to take care of himself in such business? If yea, name that occasion & the person with whom he was contracting or dealing.

The last year that he manufactured tobacco, which, I think, was 1884, the question of his manufacturing was the frequent conversation between myself & other parties, & I expressed to these parties, as his special friends & near relatives, my belief that he was mentally incompetent to carry on the business he proposed that year; that it was a duty they owed him & his family that they should take such steps as necessary to place him in the charge of some person for management. I also talked repeatedly with him on the subject & endeavored to show him that it would be to his interest financially, physically, & mentally to desist from any kind of employment that year, in which I was ineffectual; that he did not take any interest by personal superintendence over the said business, & that
426 the said business was carried on entirely by his employed man, which was contrary to Mr. Millner's former acts & a thing that he never was known to do before. Subsequently, after that, in speaking of this same business, Mr. Milner made complaints of me & told me personally that I had failed in the performance of my duties as his attending physician in not forcibly resisting his manufacturing tobacco that year, or, in other words, to use his own expression, he said I should have had him arrested, as I was well aware that he was incompetent to do business.

159. When did he thus complain to you?

In the latter part of 1884.

160. Are these the only occasions that you know of in which he showed incapacity to contract?

That's about the only one, of my own personal knowledge, that I recollect.

Re-examination by A. M. AIKEN:

161. During that year, 1884, did you hear or know of any
427 instance in which James R. Millner exhibited his incapacity to act judiciously in making a bargain & sale?

I so regarded it myself. A lot of tobacco that he worked that year—about 6,000 lbs. or 6,500 lbs.—that was carried over from the previous year's purchase, for which he said he had be- offered in the leaf at the factory over 30c. or 35c. per pound, & which I insisted on him to take, on the grounds, as formerly stated, of his mental & physical condition to transact business, & from the further fact of the handsome profit that he would realize on the sale of said tobacco & thus be relieved from all annoyance & trouble, with decided advantage to him in his then condition, & the importance of attending to the restoration of himself as soon as possible, unincumbered with any business whatever, instead of doing which he insisted on & did manufacture the said tobacco, over which he didn't superintend at all personally and acted, as formerly stated, contrary to his general manner of doing business.

428 162. How did the manufacture of the lot of tobacco spoken of turn out?

I couldn't speak, of my own knowledge.

163. For what cause did Millner think that you should have him arrested?

That I had suffered him to go on transacting business when he was incompetent to do it, & that he had been damaged thereby in his pecuniary matters.

164. Was it customary with him to admit his incompetency in making bargains & sales & in conducting his business?

No, sir.

165. Did he superintend his business that year, 1884?

He did not.

166. Was he at home?

He was at home during the time the manufacturing was going on, a period of 3 or 4 months.

And further the deponent saith not.

W. A. TROTTER.

Witness:
F. F. BOWEN, *Com'r.*

429 The witness, JOHN P. MILLNER, being first duly sworn, deposes and says:

167. State your age, residence, and occupation.

Age, 46 years; occupation, tobacconist; residence, Pittsylvania Co., Va.

168. State your relation to Jas. R. Millner & how far you have resided from him during your life.

He is a brother of mine, & we resided five miles from each other.

169. Has he been a tobacconist also.

Yes, sir.

170. Have you had constant intercourse with him all your life?
Yes, sir.

171. Did you have any business relations with the concern of Hoffman, Lee & Co., of Baltimore, prior to the year 1873? If so, state the character of these relations.

Yes, sir; I commenced business with Hoffman, Ball & Co. under the style of J. P. & J. T. Millner in 1869, and in 1872 it was changed to Millner Bros. We manufactured leaf tobacco & shipped
430 it to Hoffman, Ball & Co., I think. I think (*sic*) the firm changed to Hoffman, Lee & Co. in 1872. They made us advances upon tobacco previous to shipment. In 1868 I did business with my brother, Jas. R. Millner. We had a contract for 5 years, and in December, 1868, I withdrew from the firm & left Jas. R. & a younger brother in the business.

172. Upon what terms did you ship tobacco to Hoffman, Lee & Co.? State how they regulated their advances.

We agreed to manufacture and ship them so much tobacco; they agreed to advance us so much money, & we binding ourselves to ship them all the goods we made that season.

173. Did James R. Millner have business relations with the said concern prior to 1873? If so, state the character of them.

Yes; he shipped them tobacco upon consignment & gave a mortgage upon his property to secure advances.

431 174. Did you have a settlement of your business with Hoffman, Lee & Co. — 1873—I mean the partnership business of your brother, J. T. Millner, & yourself?

Yes, sir.

175. Did James R. Millner have a settlement with them at the same time?

Yes; Millner Bros. had a settlement for Jas. R.

176. How much did Hoffman, Lee & Co. claim of Millner Bros. then?

(By pl't'ffs' counsel: Objected to as irrelevant.)

Sixty-seven hundred dollars.

177. At what sum did they settle with Millne- Bros.?

(Same objection by pl't'ffs.)

We settled upon a basis of about $4,200.00.

178. How much did Hoffman, Lee & Co. claim of Jas. R. Millner at that time?

I think somewhere near $15,000.00.

179. Upon what terms did they settle with James R. Millner?

At the time that Millner Bros. settled $4,200.00 with
432 23,000 lbs. of tobacco, known as the "Blair Athol" brand, which they valued at 18c. p'r pound, making $4,140.00, & upon that they were to release Millner Bros. from all indebtedness. Then Mr. Hoffman remarked that we had settled that as Millner Bros.; that it would be much better if James R. Millner would settle his indebtedness; that he had threatened suit, & he called to my brother, J. T. Millner, to know if he didn't have any influence over

him, Jas. R., to get him to settle. My brother, J. T., replied that they had had some difference about hands, & that he had no influence. He then asked me if I could get him to do it. I then asked Mr. Hoffman upon what basis would he settle with my brother, Jas. R. He replied that if J. R. would give up his place & fixtures, upon which he had a mortgage of $16,000.00—near that—that he would release him from his indebtedness. I then told Messrs. Hoffman & Lee that I would see my brother, James R., & see what he would do. My brother at that time was at W. T. Clark's grocery store on Main St., which was generally headquarters for all parties shipping
433 to Hoffman at that time. I told James R. what Mr. Hoffman proposed. His reply was that he would see them in hell first. As I went to leave Clark's grocery he called me back and stated that if Messrs. Hoffman, Lee & Co. would let him remain upon the place for that year he would do it. I delivered said message to Messrs. Hoffman & Lee at the Tunstall House or Paxton House, I forget which it was called at that time. Their reply to me was that they would do it & get Mess. Robinson & Green to fix up the papers.

(Answer objected to as far as it states terms of any settlement with Millner Bros.)—J. P. H.

180. Did Mr. Hoffman & James R. Millner speak at that time?

No, sir; they did not. My brother remarked that he wouldn't speak to him; that he wouldn't meet him for fear that he would kill him; he looked upon him with perfect contempt. I tried my best to get him there to see Mr. Hoffman; he was fearful
434 that Mr. Hoffman would say something to him to cause him to kill him; that he had doubled the amount on him that he owed him to prevent his going into bankruptcy; that was at the time of the conference between Hoffman, Trotter & Pritchett, Millner Bros., Burton, and Swanson.

(Objected to so far as it states what Jas. R. Millner said, except it be shown that it was in the presence of the plaintiffs.)

181. Did you conduct the negotiations for a settlement between Mr. Hoffman & James R. Millner?

At that time I did. I think my brother, J. T. Millner, made a trip or so to Baltimore in reference to it and compleated it.

182. Did you bear Mr. Hoffman's proposition to James R. Millner at Mr. Hoffman's request?

Yes, sir.

183. Did Mr. Hoffman ever require or did James R. Millner ever agree to give up all the property he had in the world in the settlement?

I don't think, sir, he ever did. I don't think he could have
435 done it. He only gave up what Hoffman had a mortgage on. He valued his place at $16,000.00, & so advertised it in the Danville Register at that time, or rather before that.

184. Did Mr. Hoffman ever request you to state to James R. Millner that he required him to give up all the property he had?

No, sir; he never did.

185. Did you make any such proposition to Jas. R. Millner for Mr. Hoffman?

No, sir; I did not.

186. Did the two men afterwards make a settlement upon the terms proposed by Hoffman & accepted by Millner, through you?

Yes, sir; I think they did.

187. Did or not James R. Millner always dispute the amount claimed of him by Hoffman, Lee & Co.?

Yes, sir; & stated that he wouldn't believe Hoffman on oath.

188. Do you know why it was that James R. Millner's land came to be estimated at $16,000.00?

From the simple fact that the house, &c., on it he valued at that, & the survey of the Norfolk & Great Western R. R. went
436 right by his place, & that he thought the depot would be at the place.

189. At what time did the settlement between Hoffman, Lee & Co., of which you have spoken, take place, & where?

I think it commenced & was completed in this town, between Jan'y & April, 1873.

190. Was the Norfolk & Great Western R. R. built?

No, sir.

191. Did you afterwards purchase from Hoffman, Lee & Co. the mortgaged property conveyed to them by James R. Millner?

Yes, sir; Millner Bros. did. They proposed to sell us the property.

192. What did you pay for it?

They asked us $16,000.00 for the place & held out the inducement that the Norfolk & Great Western R. R. would make it bring that. Then we proposed to give them 16,000 lbs. of a brand of tobacco known as the "Extra Golden Twist," a very popular brand
437 upon the Baltimore market, which had been bringing from one dollar to $1.10 per pound. We shipped the tobacco at several shipments during the year 1873, & after Mess. Hoffman, Lee & Co. received the tobacco they claimed that the tobacco was not up to the standard & claimed an additional 5c. per pound on the tobacco. Millner Bros. refused to pay it. Arbitrators were called in, & allowed on the tobacco 5c. per pound, making $800.00, which Millner Bros. paid. Then they refused still to make us a right & title to the property. Millner Bros. employed Mess. Cabell & Peatross to bring suit for the right & title to the property. Then it was that Mess. Hoffman, Lee & Co. said if we would pay our cost they would pay theirs & stop it & convey the right & title, which right & title was recorded at Pittsylvania C. H. I think it was in 1884 the deed was made—10th April.

193. After the settlement between Hoffman, Lee & Co. spoken of by you, did they continue their business relations with manufacturers in Millner's neighborhood?

Yes, sir.

438 194. Name the manufacturers & how far they lived from Millner.

J. W. Burton, about 5 miles; J. H. Trotter & Pritchett, about 6

miles; Millner Bros., about 5 miles, and Swanson, about 12 miles.

195. Did either one of the firm of Hoffman, Lee & Co. come to that neighborhood after the settlement to look after the manufacturing in which they were interested?

Yes, sir; they used to come once or twice a year.

196. What was James R. Millner doing during that time?

He was manufacturing tobacco.

197. Did Hoffman, Lee & Co. know it?

Yes, sir; they spoke to other manufacturers; stopped at my office & talked about it.

198. Which one of the firm?

Mr. Hoffman.

199. Did you ever hear him say that he, James R. Millner, had nothing to manufacture tobacco with, & that he had agreed to surrender to his house all the property he had?

No, sir; I never did.

439 200. Did Mr. Hoffman during these visits have an opportunity of informing himself of the business & pecuniary condition of James R. Millner?

Yes, sir; he could have done it.

201. In your judgment, what is the value of James R. Millner's estate & in what does it consist?

I think it is worth about $20,000.00—hardly that; consists of his home place near Axton, on the main road leading to Henry C. H. from Danville, worth $5,000.00 or $6,000.00; the old Banks-Millner'- place, near McDowel's mill, worth about $4,500.00 or $5,000.00; then his place in the town, I am told by real-estate agents, will bring about $5,000.00; then his personal effects, such as furniture & fixtures, about $2,700.00 or $3,000.00. That's all the visible property I know of his having.

202. How long has he owned these different places?

His home place I think he has owned since 1873, the Mc-Dowel place since 1876, & the place in Danville since about 1881.

440 203. Have the titles to these stood in his own name?

Yes, sir.

204. What was the average price paid by you for leaf tobacco in the years 1871 & '72?

About 14.25 per hundred.

205. Do you know the quality of tobacco worked by James R. Millner during these years?

Yes, sir. It was similar to that of ours. We always worked about the same stock.

206. Did James R. Millner ever work any tobacco for you & your brother?

Yes, sir; or rather we worked together in 1868.

207. Upon what terms? & state how much James R. Millner made by the work.

We made a contract for 5 years, & he agreed to pay $10.00 per hundred for working the tobacco, when it didn't cost him 5c. per pound to work it, as the same hands that I pay now $30.00 or

he had. He furthermore suspected me of going to Baltimore & making overtures to Hoffman, Lee & Co. for the purpose of getting his property, so much so that he made his will, making me an executor of his estate, & after that destroyed it.

447 224. Were the fears he felt really based upon facts or were they mere delusions of the mind?

Delusions of the mind.

225. Did he have any reason to believe that Dr. James intended to kill him, or that Dr. Trotter or yourself intended to injure him in his rights of property?

He had none in the world, sir.

226. Were the suspicions to which you have testified common & habitual with him?

Yes, sir; from the year 1882.

227. State at what time you first knew James R. Millner to utter any unnaturally violent speech.

I could hardly tell the date. When he was quite small, 17 or 18 years, a cart ran over him, splitting his — from his eye back over his forehead. It was sewed up by Dr. Anthony & Dr. Millner. We considered him partially cranky from that time & was told by his physicians never to cross him; that he was liable to be thrown off his balance at any time. My father sent him to three colleges, & he left all of them on account of boys teasing him.

448 228. Do you recollect anything written or said by him in relation to a division of his father's estate?

Yes, sir. He wrote to me that if I claimed any portion of the $2,000.00 that my father had given him he would make me bite the dust. My father gave all the children except me $2,000.00 apiece, & he took up a notion that I would try and make him pay back to the estate so that I might get my part.

229. Do you know whether James R. Millner suspected that any person or persons wished to go to his house & kill him?

Yes, sir; he suspected J. C. James, Ro. Hoffman, J. B. Stafford, & in 1863 I was sleeping in the same room in Atlanta, Georgia, & he put four balls, he said, through Maj. Sutherlin. He shot four times through the door, thinking that Maj. Sutherlin was coming through it. In 1874 he shot a cow in the road, thinking it was James. He suspected James of killing his dog for the purpose of throwing it in the well so as to destroy his family.

230. What year was the last in which James R. Millner manufactured tobacco?

449 In 1883 & 1884, sir.

231. Did he superintend it himself?

He did not, or rather he was there, but Earl did the superintending, & myself. I used to go there every two or three days.

232. Why did not Millner superintend it?

From the simple fact the [that] he was incapable of superintending it. He said so much to his manager that his manager would have left if it had not been for me, & I told him to keep away from the factory and have no more to do with it.

233. How was he incapable of superintending it?

I didn't consider his mind in a condition to manage his business.

(Answer objected to, this witness'es opinion not being competent testimony.)

234. How did he behave himself during that year?

At times he would get fretted & tell his manager to work the tobacco as dry as dry could be; then the next hour or so he
450 would tell him to work it wet, and he sometimes claimed when the weather was perfectly dry that if he went outdoors he would get his feet wet. My brother was buried in a half mile of him in 1883, & his reason for not going out was that he would get his feet wet.

235. Was it not your opinion at the time spoken of James R. Millner knew what he was doing?

(Question objected to as calling for the opinion of the witness, who is clearly incompetent.)

He did not know what he was doing for the simple fact he tried to make a contract with me for the year 1885 for the purpose of manufacturing tobacco; that he would furnish so much money; that Hoffman, Lee & Co. owed him about $17,000.00, & that he would get a good deal from Pleasants, & that he would run three factories, one in this place & at my factory & his, & was anxious for me to do it, & asked me to write a letter to Mess. Patton & Sons, also to know if they would furnish $7,000.00 or $8,000.00 to him, from
451 which I was confident he didn't know what he was doing.

236. From what you saw and heard from J. R. Millner during the last three or four years is it your opinion that he was capable of understanding the meaning & effect of what he did & said?

(Objected to. The witness should state what he saw & heard, & his opinion is not competent.)

I don't think he did from the simple fact his physician told him not to use tobacco or whiskey, & I took his tobacco from him. I would find him with heavy quids of it in his mouth & asked his son to nail up the whiskey & not let him have it. I was confident that a man who would try to kill himself with laudanum would do almost anything to destroy his life.

Continued until to-morrow, at 9 a. m.

F. F. BOWEN, *Com'rr.*

COM'RR'S OFFICE, 24 *Feb'y*, '86.

Present: Same parties as on yesterday.

Cross-examination by J. P. HARRISON:

237. Did Millner Bros. keep regular books in the course of
452 their business; if yea, where are the said books, & who was their book-keeper in 1872, '3, & '4.

Yes, sir; I was their book-keeper and the books are at my house.

238. Will you produce the books before the com'rr; &, if yea, when can you do so at your earliest?

(This question & request are objected to by counsel for J. R. Millner's committee unless it be first shown that said books contain competent & material testimony for the plaintiffs in this suit.)

I could do it if necessary. The books are there and any — can get them or look over them.

239. In direct examination, answer 175, you say that Millner Brothers settled with Hoffman, Lee & Co. for James R. Millner. When did they do so?

Somewher between 1st Jan'y and April, 1873.

240. Wh was present at said settlement, where was it consum-ated, & what were the terms? State your knowledge, & not what you have heard, please.

It took place in the Paxton or Tunstall House—the first
453 negotiation. My brother, J. T. Millner, myself, Mr. Hoffman, & Mr. Lee were present. At the same time Millner Bros. had settled with them, they (Hoffman, Lee & Co.) taking off a little over one-third of the amount that Millner Bros. — were due them, & after that was concluded, then it was a negotiation of the settlement of Jas. R. Millner was commenced, same as in the answer given yesterday. J. T. Millner closed the negotiation we made, I think, by making a trip to Baltimore. Jas. R. Millner was to make Hoffman, Lee & Co. a right & title to his place upon which he resided as well as his fixtures, &c., and upon that they were to release him from his indebtedness.

241. How do you know the terms of the settlement as privately consummated if you were not present when the same was consummated?

From the simple fact we had a copy of the settlement signed by Millner Bros., which I guess Mess. Hoffin-, Lee & Co. has.

242. Was J. R. Millner present at the time of this final settlement?

454 He was not, sir, in Baltimore nor here; if he was it was unknown to me.

243. Are you positive that the settlement made between Hoffman, Lee & Co. & James R. Millner was finally made in Baltimore?

I think it was or here, one.

244. Do you know?

I can't say positively.

245. Did not James R. Millner meet Mr. Hoffman on February 28, 1873, in Danville and settle the terms of the release of his indebtedness himself?

If he did I do not know it. I don't think he did, for at that time I don't think they spoke—that is, Jas. R. didn't speak to him.

246. Do you deny that Jas. R. Millner did meet Mr. Hoffman here in Danville and in person arranged that settlement?

I don't think he met him. If he did Mr. Hoffman should have
papers to show the settlement. I can't deny it, from the
455 simple fact it is something I don't know nothing of, but I don't think he did. He never made a settlement of two cents but what he entered it up.

247. Mr. Hoffman has deposed that that settlement was made on the 28th day of February, 1873, in Danville, between himself alone & Jas. R. Millner, and that after the conference between them had lasted some time that J. T. Millner came in & was present at the settlement, which was arranged & drawn up by H'n Robertson. Do you know or not whether these statements are true or false?

I don't think they are true, sir; if they were I would have heard of it. The time the settlement commenced was at the time Mess. Hoffman, Lee & Co. requested all manufacturers who were shipping to them to meet them here somewhere about that time or between 1st Jan'y or April for the purpose of a settlement; said manufacturers were Trotter & Pritchett, J. W. Burton, Millner Bros., and others.

248. My last question referred to the consum-ation, not the
456 commencement, of the settlement. I now repeat do you know when the settlement was consummated, by whom, when, & upon what terms?

I do not.

249. Did Millner owe the $5,000.00 of which you speak in answer 178?

I don't think that he did. Mess. Hoffman, Lee & Co. did him as they did the other shippers, had them charged nearly double the amount they owed & claimed that it was clerical errors; as they did with Millner Bros., and as they did with J. W. Burton. I heard my brother, Jas. R., say that he didn't owe him half the amount that they had him charged with.

250. Did not Jas. R. Millner admit upon that final settlement that he owed Hoffman, Lee & Co. that balance?

I don't think he did, sir; never before me, & I think if he had I would have known it.

251. Examine Exhibit Hoffman No. 2, filed with the bill of the plaintiffs in the suit they have brought in the circuit court of the United States, at Danville, & say whether or not that is not
457 the deed conveying to Hoffman, Lee & Co. Jas. R. Millner's place, & whether the amount of the debt due Hoffman, Lee & Co. is not stated in that deed at $15,758.67, and state in whoes handwriting the most of the deed is & in whoes these figures, $15,758.67.

A copy of this exhibit is asked to be filed here, certified by the commissioner as correct, "Hoffman No. 2."

I guess this is the deed, while I never saw it before. The handwriting, I don't know whoes it is; the figures, I think, are James R. Millner's. I may be mistaken, but I think they are James R.'s.

(Exhibit Hoffman No. 2 is herewith filed as requested.)

*260. (*sic.*) Whoes figures and handwriting are these figures, part of said deed, viz: "15th," in first line, first page; "Sallie E. Millner," in

*This No. 260 is an error & should have been 252. They proceed from 260 on.—F. F. Bowen, com'r.

4th line; $15,758.67, in second line from bottom of first page, and $15,758.67, on 11th line from top second page, & all the balance of the deed from the 6th line from the bottom of the second page to the signatures and seals?

I think they are James R. Millner's, except that part of the
458 deed from the 6th line from the bottom; I don't know whoes that is.

(N. B.—It is admitted by counsel for defendant's committee that the first part of the deed was written by Harrison Robertson & the latter part by Buyman Green, att'ys at the time for Hoffman, Lee & Co.)

261. Was not the property conveyed to Hoffman by that deed worth much less than the debt in consideration of the release of which debt it was conveyed?

I don't think it was. My brother at that time had advertised through the Register at $16,000.00 for the place, saying nothing for the fixtures. He rated it at that.

262. Did not James R. Millner at that time admit that *that* the mortgage- property so conveyed to Hoffman, Lee & Co. was much less than the debt due them?

(This question is objected to if it refers to the admission contained in the deed, that instrument being the best evidence.)

He claimed that the place was worth $16,000.00, while he
459 claimed that he did — owe Hoffman more than $7,000 or $8,000.00. His valuation of the place was based upon the Norfolk & Great Western road comming by the place.

263. Examine Hoffman No. 2 and say if therein Jas. R. Millner does not over his signature & seal admit at the bottom of page 1 that the debt, $15,758.67, was far in excess of all the mortgaged property; &, if yea, how can you reconcile that solemn agreement with your last answer?

(Counsel for the committee of Jas. R. Millner objects to the above question because the deed referred to is the best evidence of the admission & because the witness has nowhere said from his knowledge that the admissions by the deed were not true.)

He admits the depreciation, I think, owing to the failure of the R. R. coming by his place. I don't think he could admit it upon anything else. The depreciation accounts for it.

264. When did it become known that the Norfolk & Great Western R. R. had failed to or would fail to come by the mortgaged property, thus causing the depreciation?

I cannot say. I don't know what time; it was somewhere in 1873 or 1874, I think.

460 265. It is stated by Mr. Hoffman in his deposition that when he began business with James R. Millner that he, Millner, estimated the property as worth $15,000.00, but at the interview in 1873 that he, Hoffman, offered it to Jas. R. Millner for $10,000.00 on time, which Millner declined, & that Hoffman, Lee &

Co. had to take the property. Was it not prior to 1870 that Millner put his property at such high figures?

I can't say. I think it was somewhere between 1870 & 1873, & I think Mr. Hoffman valued it, too, at $15,000.00 or $16,000.00.

266. Did you not buy the mortgaged property from Hoffman, Lee & Co.; if yea, at what price in money & when?

We bought it in 1873. Mess. Hoffman, Lee & Co. proposed to sell us the property; he asked us, as well as I recollect, $16,000.00 for the place. I asked him what he would take for it in J. P. Millner's "Extra Golden." He then made his calculation & said if we would give him 16,000 lbs. of "Extra Golden" under the brand of Jas. R. Millner that we could have the place; that our brand
461 of "Extra Golden" was not so popular as Jas. R.'s on the Baltimore market. I told him that I would let him know in a few days what we would do. I came home, had a talk with my brother, J. T. Millner, then went to see Jas. R. Millner to see what he would give us for the place; he told us the sum he would pay. We saw that we would be making something by the purchase. My brother, J. T. Millner, went to see Hoffman, Lee & Co. & closed the trade upon that basis.

267. You did not buy from Hoffman, Lee & Co., then, until Jas. R. Millner had agreed to buy the property back from you; is that true?

Yes, sir.

268. What did Jas. R. Millner agree to pay for it?

He agreed to pay us $6,000.00, & paid it.

269. What did you estimate that it would cost you to supply the 16,000 lbs. "Extra Golden Twist?"

$4,000.00, we making $2,000.00 by the operation.

270. If it only cost you $4,000.00 to make & supply the
462 16,000 lbs. "Extra Golden Twist," which is at the rate of 25c. per pound, what was the price commanded on the market for such tobacco when manufactured?

All the way from 70c. to $1.00, which I have accounts to show.

271. Have you any account sales to show this from Hoffman, Lee & Co.? If yea, produce them.

No, sir; my account sales from Hoffman, Lee & Co. were consumed in the fire Nov. 17th, 1885, when my factory burned; but we had no account of sales of James R. Millner's "Extra Golden" from the simple fact we only furnished him 16,963 lbs. of Extra Golden; the 963 lbs. he claimed under the arbitration.

272. When & to whom did you or any broker for you sell J. R. Millner's Extra Golden @ $1.00 or $1.10?

I think Mess. H., L. & Co. sold it in 1870 for as much as $1.00, probably $1.10, so my brother Jas. R. told me, & we wrote to Mess. Hoffman, Lee & Co. that he was getting that price for Jas. R., why could he not get the same for us. His reply was that it was
463 not worth in 20c. or 25c. what my brother's was, as his was an old brand upon the market.

273. You swore positively yesterday that when you agreed to pay 16,000 lbs. Extra Golden Twist for the property it was selling at $1

or $1.10. Did you so depose of your knowledge or from hearsay, and can you now say that that brand at that time commanded such a price on the Baltimore market?

I did not state it. I stated that it had been bringing from $1.00 to $1.10, but not at that time. From my own knowledge, from Jas. R. Millner's account sales that he showed me the year before we commenced work for him, I saw it in 1868.

(*Sic*) 273. Was not Jas. R. Millner's Extra Golden Twist worth on the Baltimore market about 60c. in 1873, when you agreed to pay the 16,000 lbs. for the property?

I don't think it was. As well as I recollect, it was, 80c. It was much lower in 1874 than in 1873, and I think in the contract signed by J. T. Millner, in Baltimore, I think we were to make it up
461 to the standard of 1872, which contract Mess. Hoffman & Lee have, if they will produce it, as our- got burnt up. When we made the first shipment Mess. Hoffman & Lee said nothing of the tobacco coming up to standard. After we had compleated the shipment of 16,000 lbs. they claimed that the tobacco was not up to standard, & brought forward a contract signed by my brother, J. T. Millner, for Millner Bros., which called for the two lowest-priced men in the city of Baltimore to arbitrate the goods, & the arbitrators decided it was not up to standard by 5c per pound.

274. When did J. T. Millner contract to pay the 16,000 lbs.—before or after the settlement with J. R. Millner?

J. T. Millner never contracted to pay it. Millner Bros. contracted to pay it after the settlement with Jas. R. Millner by J. T. Millner.

275. Examine Hoffman No. 1 & say whether that is the contract called for in your aforesaid answers. The notary is requested to copy herewith.

Copy filed, Exhibit Hoffman No. 1.

A. Yes, sir.

465 276. Did not Hoffman, Lee & Co. consider that they would receive about $5,000.00 or $6,000.00 for the property sold to you, & was not that the consideration in dollars of the conveyance to Millner Bros.?

No, sir; it was not. I think they considered that they were getting out of the tobacco about the same amount which James R. Millner owed them. Upon a basis upon which they settled with Millner Bros., that was ⅓ of the amount off; but writing up the deed conveying the property to Millner Bros. they put it upon a basis of $5,000.00, at the request of my brother, J. T., for the purpose of saving to Millner Bros. a heavy fee for recording, which they, Hoffman, Lee & Co., have the letter to that effect, if they will produce it.

277. Had you not already agreed to sell the property back to Jas. R. Millner for $6,000.00 before you bought it from or contracted to buy it from Hoffman, Lee & Co.?

No, sir; I did not. In purchasing the property we told Mess. Hoffman, Lee & Co. that if we could sell the property to Jas.
466 R. Millner or any one else we would do it, & we did sell it to Jas. R. Millner, & so wrote him & told him in person.

278. Did not you first refuse to buy from Hoffman, Lee & Co. until you had first secured Jas. R. Millner's agreement to buy it back from you?

Yes, sir; I told Mr. Hoffman as soon as I could see what I could do I would let him know. My brother, J. T., went to Baltimore and made the trade with him.

279. Did you not advise Hoffman of the price Jas. R. would pay; if yea, what price?

Yes, sir; $6,000.00, & also told him what the tobacco would cost us.

280. Did you agree to give Hoffman, Lee & Co. 16,000 lbs. of tobacco, which, you say, they expected to sell for $15,000.00, about, when you knew you could get only $6,000.00 for all the property bought by you?

I had no expectation of what they would get. I only took them up at their own proposition. They knew better what the tobacco was bringing than I did.

467 281. Did you not agree with Jas. R. Millner to buy the property & sell it back to him? If yea, when did you so agree?

I never agreed until Mr. Hoffman proposed to sell it to us, my object being to make money so that I could do it, & so made the trade.

282. How much property besides the Axton place, factory & fixtures, did Jas. R. Millner own in Feb'y, '73?

I don't know, sir. He claimed that his father owed him; how much I don't know.

283. How do you know that Jas. R. Millner did not, on Feb'ry 28, 1873, when the settlement with Hoffman, Lee & Co. was consummated, agree to surrender all his property to them, of all kinds, if they would release him from all balance due them, and else threaten- to go into bankruptcy?

From the simple fact he stated that he didn't owe Hoffman & Lee the amount they claimed, & stated that Hoffman, Lee & Co., he believed, doubled his indebtedness for the purpose of keeping

468 him out of b'k'tcy, from the simple fact he stated that he gave them up his place & fixtures for what they claimed of him, & can't believe he would make a false representation. I don't think Jas. R. Millner & Hoffman spoke at that time, & Hoffman never told me that he surrendered everything. Hoffman stated that Jas. R. Millner was to give him up his place, factories & fixtures, for the indebtedness, & that was the message I bore from my brother to Hoffman & from Hoffman to my brother.

284. Was it before or after the settlement of Feb'y 28th, '73, that you told H., L. & Co. that J. R. Millner had agreed to give you the $6,000.00 for the place?

It was after the settlement. The negotiation of the purchase of the place commenced with myself & was compleated for Millner Bros. by my brother, J. T. Millner.

285. Your answer to 283 is argumentative. I now ask you if you know, of your own knowledge, that Mr. Hoffman d[illegible] not demand

on Feb'y 28, '73, & Mr. Millner agree to surrender, all of his property as a basis of settlement?

No, sir.

469 286. Examine Exhibit Sullivan No. 2 with Mr. Hoffman's deposition in the chancery suit & say whether it is in the handwriting of Jas. R. Millner.

Notary is asked to file copy.

Yes, sir; I think it is in my brother's handwriting.

Filed Exhibit Sullivan No. 2.

287. When Jas. R. Millner agreed to buy back the property from you & to pay you $6,000.00 had he made & delivered a deed to Hoffman, Lee & Co.?

Yes, sir; he had made & delivered a deed, so he told me.

288. Did not Jas. R. Millner hold up the deed, Hoffman No. 2, after its execution, & refuse to deliver it, saying it would be useless, as he had bought the property back from you & it had best stand in his name, as it had always done?

If he did I don't know anything of it.

289. When did Jas. R. Millner pay Millner Bros. for the property & in what funds?

During the year 1874; I think it was in fund- from A. Seemuller & Sons.

290. In cash or by check?

470 By drawing on A. Seemuller by draft or check at different times.

291. Who lived on & occupied the place from & after your agreement to buy and sell to J. R. Millner, in March, 1873?

Jas. R. Millner.

292. Did he lease it or pay you interest on purchase-money?

He did not lease it nor did he pay us rent. We let him remain on it as a brother.

293. Did James R. Millner work the factory in 1873; &, if yea, did he work with Millner Bros. or for himself?

He did not work the factory in '73. He had an interest with Millner Bros. in '73.

294. When did that interest begin & upon what terms did Jas. R. Millner work with Millner Bros.?

It commenced in the season of 1873. The season commenced about 1st of April & continued to November. He had one-third interest of the proceeds or ⅓ of the tobacco manufactured by Millner Bros., & it was left to his discretion which he would take.

471 295. When & why did Jas. R. Millner dissever this association with Millner Bros.?

In 1874; I think some time in December; on account of a brand of tobacco we branded similar to his.

296. Was not the 16,000 lbs. Extra Golden Twist manufactured & shipped before Dec., 1874?

Yes; shipped in 1873.

297. What was Jas. R. Millner's input into the firm of Millner

Bros. for the season of 1873 & 1874, when he worked as partner in that consern?

$7,000.00 in the tobacco business.

298. Who were the commission merchants of Millner Bros. during these seasons?

We had Hoffman, Lee & Co., A. Seemuller & Sons, J. B. Stafford, of Baltimore; Wm. H. Bunton, of Philadelphia; Wm. L. & R. L. Armstead, of Nashville, Tenn.; Harper, Holmes & Co., of Cincinnati, & others I can't think of.

299. Was Jas. R. Millner at that time—in 1873—at all disturbed as to the finality of the settlement he had made with Hoffman in 1873?

He was not.

472 300. Did not Jas. R. Millner at that time intimate to Millner Bros. that he wanted to renew his business relations with Hoffman, Lee & Co., but he feared they would upset the settlement of '73?

No, sir; he did not. Millner Bros. tried to get him to do it, & I think wrote letter after letter to Hoffman, Lee & Co., & we suggested in them to write James R. Millner, which letters will be shown if he will produce them.

301. Why did you want Jas. R. Millner to renew his business with Hoffman, Lee & Co.?

From the simple fact that they had obtained good prices for us. We were anxious for him to ship his tobacco to them.

302. Did he object to doing so; if yea, why?

I think he did, & objected from the fact that he didn't believe they were honest.

303. Did not Jas. R. Millner say that he was willing to do so, provided Hoffman, Lee & Co. would say they desired it & would agree to let bygones be bygones & never seek to set aside the

473 settlement of Feb'y, '73?

I don't think that Jas. R. Millner ever said that, but Millner Bros. said it for him. As well as I recollect, I think I wrote the letter myself.

304. Did Millner Bros. think that the settlement was not a fair one & could be upset; that you volunteered to write a letter after it was all over pleading Hoffman, Lee & Co. not to try to upset it?

(This question is objected to because any opinion entertained by Millner Bros. on the subject-matter of the question is not competent testimony.)

We considered it a fair settlement, taking into consideration the $6,700.00 that they claimed that Millner Bros. owed him in settling upon a basis of $4,200.00, by taking off ⅓ of the amount that Hoffman, Lee & Co. claimed against Jas R. Millner, which would have left the place about $8,000.00.

305. Why, then, did you write the letter you speak of in Ans. 303?

I have no recollection of writing such a letter; if it was it was done by my brother, J. T. Millner.

474 306. In your answer to question 303 you volunteered to say that Jas. R. Millner did not say what the question called for, but that Millner Bros. said it for him & that you wrote the letter, as you recollected. Now in answer 305 you say you do not recollect writing any such letter. What is the truth—did Jas. R. Millner request you to write it or did you write it of your own will?

I have no recollection of his requesting me to write it but one of us wrote it, but I don't recollect which did it. Jas. R. Millner never was a man to make amends; that he was sorry, so & so.

307. Examine Exhibit Hoffman No. 4 with Mr. Hoffman's deposition in the suit in the U. S. circuit court here & say in whoes handwriting it is.

That is in the handwriting of myself.

(Com'r requested to file a copy. Filed Ex. Sullivan No. 4.)

308. In that letter you wrote to say you had advised Jas. R.
475 Millner to turn his business over to Hoffman, Lee & Co., and wrote as follows: "While he seems to be perfectly willing to do so he will not do so until you write him that you desire his business & that you will never attempt to make any more out of him upon the old score, & that you are perfectly satisfied with the settlement." To what settlement do these words refer?

Refers to the settlement of 1873, in reference to his making a settlement of his property for a release of his indebtedness.

309. Had Hoffman, Lee & Co. intimated at the date of that letter, viz., July 24, 1873, that they did not consider the settlement of Feb'y 28, '73, fair & final, or that they were not perfectly satisfied with it or intended to claim anything from Jas. R. Millner upon the score of the indebtedness then settled?

If they did I have no recollection of it.

310. Why, then, did you write seeking to get them to say that they would not make such attempt & were satisfied?

476 From the simple fact we wanted our brother to ship to him & we wanted it under the signature of Hoffman, Lee & Co. that they wouldn't make overcharges.

311. Explain how the language quoted from your letter of July 24, '73, can refer to or have any bearing upon overcharges.

From the simple fact that manufacturers of this section of country who have been shipping to merchants of Baltimore & quitting them & going back—they have charged from 4 to 5 cents per box when it was not customary, & we thought that Hoffman, Lee & Co. might do that for Jas. R. Millner, to that effect.

312. That explanation refers wholly to future business between Jas. R. Millner & Hoffman, Lee & Co. Why did you try to get them to write that they were satisfied with the past settlement as a necessary condition of such future business?

From the fact that we thought that if we would write such
477 a letter as that to Jas. R. that we could get him to ship the goods to Hoffman, Lee & Co.

313. Who told you that Jas. R. Millner would not renew business with Hoffman, Lee & Co. until they did write him that they would

never try to make anything out of him on the old score, & that they were satisfied with the settlement already made?

That was our own supposition.

314. If Hoffman, Lee & Co. had never intimated any purpose to try to make anything out of the old score, nor that they were dissatisfied with the settlement, why did you suppose that this was necessary?

From the simple fact that they were accused of swindling every manufacturer that shipped to them. Mr. Crumpton here was one & J. W. Burton another. He had made a settlement with J. W. Burton & then afterwards claimed than the settlement was —; so J. W. Burton told me.

315. What did these accusations have to do with the finality of the settlement with Jas. R. Millner in 1873?

478 They had nothing to do with it, while they were taken into consideration by the parties here as being dubi-us of the firm of Hoffman, Lee & Co.

316. Did you not know that Hoffman, Lee & Co. considered that settlement fair & final at that time?

Yes, sir; I think they did consider it so.

317. Please state whether Hoffman, Lee & Co. answered your letter of July 24, '73, & whether they inclosed a letter to Jas. R. Millner to you, & if you have either answer produce them.

I have no answer. If it was written it was destroyed at the time the other papers were destroyed. I guess he answered it. I don't think we ever wrote to him unless he replied.

318. Please examine Sullivan No. 5 & Sullivan No. 6, filed with Hoffman's deposition in the suit here, & say whether thoes are letter-press copies of the answers filed, Exhibit "Sullivan No. 5" & "Sullivan No. 6."

We may have received them. I don't say we didn't, & if he sent a letter to Jas. R. through us we gave it to him.

479 319. Who furnished you the money to carry on the business of Millner Bros. in 1873?

Millner Bros. furnished it themselves outside the money, $7,000.00, Jas. R. gave us. We drew a sight draft on Hoffman, Lee & Co. Sept. 30, 1872, based upon a letter which we received from them, stating that we would have about $4,000.00 to our credit, & made the draft for $2,000.00. Early in '73, probably in January or Feb'y, I forget which, he claimed that we were indebted to him $6,700.00, & never explained it satisfactorily to us, but only stated to us that it was a clerical error, & with $2,000.00 & what we received from farming & merchandising we did business. I think, as well as I recollect, if you examine the books at Patton's, that we made the draft at that time.

320. Did you get $12,000.00 from any source in the spring of 1873 other than from Hoffman, Lee & Co.?

No, sir; I did not. All that I ever got in the tobacco business was $7,000.00 from Jas. R. Millner.

480 321. Did Jas. R. Millner furnish you any funds in your store business which you then carried on; if yea, how much?

Yes, sir; he gave us $5,500.00 and something; I forget exactly what now. He remarked to us that he desired to go into the mercantile business with us; that it seemed to him that we were selling a great many goods; that he would furnish so much money. I asked him how much. He stated the above amount. We told him that we would accept it. The next day he furnished the money. In the course of two or three days he returned & said some one had told him that he had furnished more money than the "damned store was worth," & he wanted it out of it; that he was going in with Geo. K. Griggs, at Cascade. I replied that he could have it all. He said, No; give him $3,000.00, & he would let the balance remain with us, which he did.

322. In whose handwriting is Sullivan No. 9, filed with Hoffman's deposition, & a certified copy to be filed herewith?

481 I think it is mine.

Copy filed, "Sullivan No. 9."

323. Where did you expect to get the $12,000.00 referred to in Sullivan No. 9, in these words, viz: "We are glad to inform you that $12,000.00 more will put us square with the world. The next ten days will give us that amount?"

We expected to get it on shipment of goods.

Counsel for Jas. R. Millner's committee objects to the introduction of "Sullivan No. 9" because it is not competent testimony against the def't (*sic*).

324. To whom & what goods?

To any one that we could sell goods that we had manufactured in our factory.

[325] (*sic*) 326. Did you get the $12,000.00 in the next few days after July 15, '73?

(Same objection as above.)

I can't say. We might have gotten more than $12,000.00. We sold a great deal in the West, Baltimore, Philadelphia, &c. It was claimed that we ruined the Baltimore market on low-priced goods.

327. Did you not in that letter refer to some single source from which you expected at that time to get $12,000.00?

482 No, sir; I did not. The only sourse was the tobacco in my house.

328. When Jas. R. Millner furnished you the $7,000.00 in your tobacco business was it in cash, bank notes, gold, drafts, or what?

I think it was in bank notes, sir.

329. Where was he when he handed the $7,000.00 to Millner Bros.?

I think he was at home.

330. What consideration did Millner Bros. give him therefor?

One-third interest in the tobacco business.

331. When Jas. R. Millner furnished you the $5,500.00 was it in bank notes, cash, or gold, & when did he furnish it & in consideration of what?

I can't say. He gave that to my brother, J. T. Millner. I don't know whether he gave it to him here or at home. He gave it to him the next day after we had the conversation in the store. I think they both came to Danville.

(This answer, so far as it states heresay testimony, is objected to.)

483 332. In what funds did you pay him the $3,000.00 back two or three days thereafter, as stated in your answer to No. 321?

I can't say, but I think it was a check.

333. Did J. T. Millner bring the $5,500.00 into the store or deposit it in bank?

He didn't bring it into the store. I guess so. I don't know whether he deposited it or Jas. R. deposited it in bank.

334. In what bank was it deposited & to whoes credit?

I can't say what bank. We did business with the National Bank, Patton's Bank, & Johnston & Cheek. It was deposidet to the credit of Millner Bros.

335. Were these written articles of patnership between Millner Bros. & Jas. R. Millner when the latter was given a one-third interest in the business of the firm in consideration of the $7,000.00 & $5,500.00.

There might have been a memorandum. No, sir; there was not?

484 336. Do the books of Millner Bros. show the facts of their receiving the said amounts?

I can't say that they do. I don't think they do. They will show for themselves.

Continued until to-morrow at 9 a. m.

F. F. BOWEN, *Com'r.*

COMMISSIONER'S OFFICE, 25 *Feb'y*, 1886.

Continuation of cr.-ex'n of J. P. MILLNER:

337. When Jas. R. Millner withdrew from the firm of Millner Bros., in 1874, how much did he receive as his share of the profits & interest?

I think we paid him money at different times during 1873 & 1874 & bought things for him; can't say how much. As well as I recollect we finished paying somewhere between Jan'y & March, 1875.

338. Did not Millner Bros. first endeavor to get Hoffman, Lee & Co. to settle with Jas. R. Millner & not sue, as they threatened to do?

No, sir; I don't recollect that they did. Jas. R. threatened to sue them, I think.

485 339. Are you positive that Hoffman, Lee & Co. asked Millner Bros. to effect a settlement for them with Jas. R. Millner in 1873?

I can't say Jan'y, 1873; somewhere between Jan'y & March. It

was at the time he requested all manufacturers to meet him. Jas. R. had threatened them with a suit.

340. Did not Millner Bros. try to get Hoffman, Lee & Co. to settle with Jas. R. Millner rather, than ask Millner Bros. to get Jas. R. Millner to settle with them?

I don't think they did. They might have done it. I can't say. If they did H., L. & Co. ought to have letters to show it.

341. Examine Sullivan No. 3, with Hoffman's deposition in the chancery suit here, & say in whoes handwriting it is.

Commissioner is asked to file a copy, marked Sullivan No. 3. Filed —.

It's mine.

342. Do you not in that letter dated Dec'r 19, '72, advise Hoffman, Lee & Co. to settle with Jas. R. Millner? If yea, at whoes instance did you write, if any one's?

486 We wrote at our own instance, as the letter shows, with the purest motives.

343. Were you not at that time fully aware of the standing of accounts between your brother, Jas. R., & Hoffman, Lee & Co.?

Only by Jas. R. Millner. He told us that Hoffman, Lee & Co. claimed of him a great deal more than he owed them, & that he would sue them for damages, and, as well as I recollect, in the winter of 1872 he employed Cabell & Peatross for that business.

344. Did not Millner Bros. in 1872, '3, & '4 sell most of their goods in Balto.?

They sold a great many goods there. I can't say they sold the most of them. I think Baltimore was headquarters for the heaviest bulk of the tobacco of all the manufacturers of this section. I think Millner Bros. sold all of theirs in Baltimore in 1872, & it was sold by Hoffman, Lee & Co.; they held a mortgage on our property.

345. When after 1872 did you begin to sell outside; &, if yea, where?

487 It was in 1873; Philadelphia, Nashville, Cincinnati, & other points; most everywhere we could find sale.

346. At what time in 1873, & were the goods sold elsewhere of the manufacture of 1872 or 1873?

For the year 1873, during the season, the whole year. I can't say what time. The revenue books will show, as we purchased stamps.

347. Were you not under contract with Hoffman, Lee & Co. to ship to them your manufactured goods in 1873 & not to ship elsewhere without their permission?

No, sir; we were not.

348. Up to that year had you not been supplied with requisite cash chiefly, if not solely, by Hoffman, Lee & Co.?

No, sir. While Hoffman, Lee & Co. furnished advances upon goods & advances previous to shipments to us, we got money from other sources; for instance, our father furnished us his crop, some 12,000 lbs. or 14,000 lbs. *pounds* of tobacco, & other friends we had we bought tobacco from on 4 and 6 months' time.

488 349. Did any other commission merchant furnish you the requisite funds to manufacture with in 1873? If yea, state who & where such relations were formed & how much tobacco & on what terms you furnished it to such parties so advancing Millner Bros. money for work of 1873.

I can't say; my books will show, which can be had by them or any one else who wishes to see them. As well as I recollect, Stafford, Warrenton, Seemuller, in Baltimore; Haper, Holmes & Co., Cincinnati—anyway, the books will show.

350. I did not mean to ask you to whom you shipped your goods, but from whom, besides Hoffman, Lee & Co., in 1873, did you receive advances upon a contract to work the sums into tobacco & ship to such parties to cover such advances?

We had no contract with no one; we only received advancements upon shipment of goods.

351. Do you mean that you first shipped goods & then received the money or did you advise of shipments & draw for the money with bill of lading?

489 Sometimes we would do it with bill of lading & sometimes we would get advances upon shipments made. We would promise to ship upon advances. There was no written contract recorded.

352. When did Millner Bros. begin to manufacture in 1873?

I can't say. The revenue books will show. It has been so long I can't recollect.

353. In what month did you usually begin?

We generally sometimes commenced in March & have made it as late as 1st of June getting to work. The spring season generally opened in April or May.

354. Begin-ing to manufacture April 1st, when did you generally market your goods—that is, how long before you could market much manufactured tobacco of that season's work?

Just as soon as we commenced work.

355. In 1873, how much tobacco did you market in April,

490 May, June, & July to other parties than Hoffman, Lee & Co.?

Can't say. My books will show.

356. Did you in thoes months market enough to other parties to pay you $12,000.00, & will your books show this?

I don't know. If I did the books will show it.

357. Did not Hoffman, Lee & Co. control your goods in 1873 on the Baltimore market?

They did not. While we shipped them goods for sale, if we could make sales we would do it. As well as I recollect, we shipped them—outside of the 4,000 lbs. we shipped them—goods also to sell upon which we were to receive advances upon the goods in the house. While we could sell goods to any one we chose or ship to any one, at the same time we might have told Hoffman, Lee & Co. that they might have the selling of it.

358. Examine letter dated June 25th, 1873, herewith filed as "J. P. M. 1," & say in whose handwriting it is.

(Counsel for the defendants' committee objects to the in-
491 troduction of the paper handed the witness because it is not competent testimony against the defendant, Jas. R. Millner.

It is mine.

(*Sic*) 358. When & where did Mr. Hoffman request you to convey a proposition of settlement to James R. Millner?

Some times between the 1st January, 1873, & 1st March, at the Paxton or Tunstall House, at the place.

359. Do you, of your own knowledge, know what were the terms & conditions of any settlement between Hoffman, Lee & Co. & Jas. R. Millner on Feb'y 28, 1873?

All that I know is what Mr. Hoffman told me & what my brother told me.

360. Examine Sullivan No. 2 & say in whose handwriting it is.

Commissioner asked to file a copy herewith, "Sullivan No. 2." (Already filed.)

My brother, Jas. R.

361. Having read that letter, do you now say that Jas. R. Millner did not, in Feb'y, 1873, agree to surrender all he had?

492 (This question is objected to because the copy of the letter itself has been put into evidence & shows whether or not Jas. R. Millner made any such surrender.)

I don't know. I can't say from reading the letter.

362. Do you, of your own knowledge, know that Jas. R. Millner did not have other property besides what he agreed to convey & afterwards conveyed to Hoffman in 1873?

I do not know it.

363. Do you know, of your own knowledge, that Jas. R. Millner did not have $12,000.00 in cash about that time?

No, sir; I did not.

364. Do you know that he did not keep $12,000.00 of Hoffman, Lee & Co.'s money instead of applying the same under his contract with them?

I don't think he could have done it and paid for the stock of tobacco & worked it, &c.

365. Do you know that he did not do it?

I do not know that fact, but can't think that he did. He should have used in 1872 somewhere near $55,000.00 or 60,000.00 to have paid for his stock of tobacco, tax, &c.

493 366. When did you first hear & from whom anything about Millner's keeping back $12,000.00 from Hoffman, Lee & Co. in 1873?

I never heard of it only through Jas. R. Millner's derangement. I think it was some time in 1885—from Mr. Ruffin, if I am not mistaken. It might have been in July; I forget the date.

(The hearsay testimony stated by the witness in answer to the above question is objected to by the counsel for Jas. R. Millner's

committee; also the statement made to the witness by Jas. R. Millner, who at the time of making them was insane.)

367. Did you ever hear Jas. R. Millner say that he had gotten the best of Hoffman, Lee & Co.?

(Objected to by counsel for Jas. R. Millner's committee because Jas. R. Millner was insane & incapable of making a declaration binding upon him.)

I don't think I ever did nor can I think he ever said it. I never heard of any one getting the advantage of Hoffman.

368. Did not Jas. R. Millner claim in the neighborhood that he was the only man that ever did get such advantage?

494 (Same objection as above taken.)

I don't think he did. If he did I never heard of it as coming from him.

369. From whom?

From no one. There may have been such talk around.

(This answer is objected to as hearsay by counsel for Jas. R. Millner'- committee.)

370. Was not Jas. R. Millner the only manufacturer in this section to close business with Hoffman, Lee & Co. & have $12,000.00 to invest in other business at once?

I don't know as he was.

371. Name any other within your knowledge that did not have to sell out the trust property.

Millner Bros. didn't have to sell out. I don't think F. A. Swanson did; I don't think J. W. Burton did.

372. Did any of these men close with Hoffman, Lee & Co. with a profit of $12,000.00?

I can't say that they did. Some of them might have done it & more than done it.

373. Did Jas. R. Millner ever say anything to you about making restitution to Hoffman, Lee & Co.; if yea, when?

(This question is objected to by counsel for defendants be-
495 cause Jas. R. Millner being an insane man his declarations are not to be taken against him.)

He did it in the summer of 1885. Millner Bros. had made a sale of tobacco to B. F. Parlett & Co., Baltimore, which they paid us a big price for. When I was in Baltimore, after the sale, Mr. B. F. Parlett told me that he had lost money by the purchase; that his — was that our motto was that no man should lose anything by purchasing tobacco of us. I replied that if he had lost anything that I would pay it. I went with him to his office, in the presence of his son- John & Ben. & Lightwell, to show it to me on his books. He did so, & I paid it. Mr. Hoffman after that asked me did I pay it. I told him that I did. After that he replied that he had lost on the 16,000 lbs. of tobacco that he had gotten in exchange for the property. I told him that I couldn't help that; that it was his own

proposition, & Mr. B. F. Parlett & Co. were heavy customers of ours & we could readily afford to lose $300.00 or $400.00 by them
496 for the purpose of retaining them as customers. From that I think that Jas. R. Millner in his derangement thought that he should make restitution of the difference between what Hoffman, Lee & Co. got for the tobacco & the difference of the price of the prop[illegible]. That is where his restitution comes in, in my belief.

374. When & where did the foregoing conversation with Hoffman occur? Give the date & month of 1885, & how did Jas. R. Millner know it?

It didn't take place with Hoffman in 1885. It took place with Jas. R. Millner, in reference to his restitution, in 1885—after the year 1873 or '4; it took place in Baltimore. It was after I paid Parlett the balance—his books will show—& after that conversation I related the circumstances to Jas. R. Millner somewhere between 1873 & 1876.

375. When you related this to Jas. R. Millner, somewhere between 1873 & 1876, did he then say anything about making restitution to Hoffman, Lee & Co.?

He did not.

497 376. Did you ever refer to the circumstances detailed in your answer No. 374 to Jas. R. Miller again; &, if yea, when?

I never until 1885, when he said about making restitution to Hoffman that he didn't believe that he could get religion until he made restitution, & advised me if I wanted to get religion to give up all I had, & quoted some passage in St. Paul's writings, I think.

(The statements made by Jas. R. Millner in this answer are objected to, because he was insane when he made them, by counsel for def'ts.)

Counsel for plaintiffs agree to consider the foregoing objection as made to all subsequent questions & answers calling for declarations, statements, or admissions of Jas. R. Millner.—Jas. P. Harrison, F. C.

377. Did you first recall to him what had happened between you & Parlett & what Hoffman had said to you, or did he himself mention that as the reason for making restitution?

498 At that time that was not mentioned when he spoke of the restitution. Then I repeated it to him again & told him not to let it bother him; that I didn't consider that he owed Hoffman, Lee & Co. a cent; that if he was to give up all his property that would not cause him to get religion. I first called it to his attion then, & I had told him of it years before that.;

379. Had you not gone to Philadelphia & Baltimore with him before that; if not, did he go, & with whom, to each place, & when?

I did not go with him to each place. I don't know what time he went. He went to Philadelphia, I think, with Howard Estes. I don't know of his going to Baltimore.

380. Did not Jas. R. Millner have a fall at his factory in 1884 or 1885?

I think it was in 1883 or 1884 he fell at his house upon his steps.

381. Did he not send for Mr. Peatross or come to Danville & get Mr. Peatross to write his will after such fall or about that time?

499 I think I sent for Mr. Peatross. I know he did, for I was there at the time. Mr. Peatross was there, I think. It was in 1884.

382. Was not the first will prepared there; if yea, who were the executors & what security did the will require of them?

I can't say — the first will. That the only will I ever heard of that was drawn up by Mr. Peatross he made me the administrator & executor, I think, jointly with his wife, without any security.

383. What became of the will?

I think it was destroyed. I told him that it was not worth the paper that it was written upon; that he was not competent to make a will, & that I didn't think Peatross ought to charge him for it, as he, Peatross, knew he was a maniac when *when* he wrote the will, or ought to have known it, & got Peatross to write a power of attorney directing me, his agent, to transact his business, which I refused upon the grounds of his insanity.

500 384. Were you present when Peatross prepared this will?

Yes, sir; I was present in my brother's room upstairs. He took a memorandum of it in the room I was in, & I guess compleated it in the room in which he was staying.

385. Did Jas. R. Millner give Mr. Peatross the memorandum or tell him what the will should provide?

Jas. R. Millner was lying in bed and Mr. Peatross was sitting near the foot of the bed, & he would ask him questions & my brother would answer them.

386. Were the provisions of that will wise or unwise?

Very unwise, I think.

387. Did not that will confer very large powers on the executors?

Yes, sir.

388. Were its provisions without sense & contrary to what naturally Jas. R. Millner should have done by his will? If yea, state how.

I think most of his *predictions* to Peatross were without sense. Some of them were sense and some were not, as was generally

501 characteristic of the man. For instance, he valued his property at $70,000.00 at the time I stated to him it was not — $20,000.00, & he stated in his will that he would give me $20,000.00 in cash to work tobacco with; also mentioned a contract in the will drawn up between him & myself when there never was *none*.

389. Did not Jas. R. Millner tell you that he was going to confess all to Hoffman, Lee & Co. & make his peace with God & man, & did you not then seek to put him in & insane asylum?

He did not.

390. Examine Sullivan No. 8 & say whether that is a correct catalogue of Jas. R. Millner's assets in June, 1885.

Copy Ex. "Sullivan No. 8" filed.

No, sir; I can't say it is a correct catalogue. It may name the

property, but I can't say the price is correct. He has these different places near Sandy river, claimed here to be worth $4,500.00; then he has his home place; how many acres in it I don't know; then he claims this property in Danville, where J. R. Morrison now lives; but as to figures they are nowhere correct.

502 391. Hasn't he a farm in Henry county?

If he has I don't know it. I never heard of it.

392. When did you sue out papers to have Millner sent to the insane asylum?

18th May, 1885. I file it as part of my answer. My mother & his wife & daughter prevented my executing it—Ex. "J. P. M. No. 2"

393. Did you know at the time that he had sent for Mr. Peatross and gotten him to write to Hoffman, Lee & Co. for forgiveness?

I never knew it until Mr. Peatross showed me the letter in this place long after that.

394. Did you hear him say at that time that he had been given a book of sermons by Moody by Mr. Peatross?

No, sir; I did not. I don't think he got a book of sermons by Moody from Mr. Peatross, but from Mr. Traynham.

395. Did you ever examine that book?

I may have read some in it. I think I've got it myself. No, sir; I never examined it.

503 396. Prior to May 18, '85, had not Jas. R. Millner talked about making restitution to Hoffman, Lee & Co.?

I don't think he had; I don't know of his doing it.

Re-examination by A. M. AIKEN:

(*Sic*) Re-examination — J. P. MILLNER:

397. Was Jas. R. Millner bred to the tobacco trade?

Yes, sir.

398. How old was he when he began it?

I think about 18 years old.

399. Had he been successful at it down to the time his mind became diseased?

He had.

400. Was he solvent at the close of the war?

Yes, sir.

401. Did he continue the business after the war? If yea, state what year after that did he first do any business in tobacco.

I think in 1866.

402. Did he have any associate?

Yes, sir; James B. Pace, of Richmond.

403. How long did those two continue in business, & were their operations successful?

504 They did business for that year; their operations were successful.

404. How much money did they make?

About $8,000.00, so Jas. R. told me.

(All this testimony is objected as hearsay & not *or* cross-examination by counsel for plaintiffs.)

405. Is J. B. Pace a celebrated tobacconist or not?

He is a celebrated tobacconist.

406. After Jas. R. Millner dissolved business with Pace did he continue to work tobacco?

Yes, sir.

407. Was he successful or not in his operations?

He was successful.

408. Did he make any money? If yea, state how much.

I don't know how much he made in 1867. He must have made a good thing out of it, though. He was by himself. In 1868, from the amount of tobacco he worked, he must have made $11,000.00 or $12,000.00, as we agreed to pay him $10.00 p'r hundred for working the same, while my brother, J. T. Millner, & self lost $622.00.

505 (This answer is objected to as showing on its face that it speaks not of the knowledge of the deponent, but of his opinion from hearsay, by counsel for plaintiffs.)

409. How much tobacco did he work for which he received $10.00 per hundred for working?

Between two & three hundred thousand pounds—near 250,000 lbs.

410. How much did it net him per hundred pounds?

It netted him about 5c. profit p'r lb. I don't think it cost him over 5c. to work it.

411. Prior to Jas. R. Millner's loss of mind & health what was his character & habits as a man of business & tobacco manufacturer?

His character was very good; had an undisputed credit; energetic & persevering in business; rarely ever had anything to say, only on business. He was a good manufacturer.

412. Was he economical or wasteful with his money?

He was economical, and was considered very close in business.

506 413. Did you ever know him to meet with any financial reverse before his business connection with Hoffman, Lee & Co.?

Never did.

414. When all the customers of Hoffman, Lee & Co. met in Danville, between January & April, 1873, to settle with Hoffman, Lee & Co., were any others besides J. R. Millner found in debt to them?

I think there were—in fact, all of them.

415. Were compromises made with any of the others? If so, which of them, and upon what terms?

I think it was made with all. I know it was made with Millner Bros. with over ⅓ off. I think there was Burton, Trotter, & Pritchett. It was a general compromising time.

416. Under the bankruptcy statute at that time how much was a debtor required to pay before he received his discharge?

(Objected to; the statute shows for itself.)

417. Look at the deed from J. R. Millner & wife to Hoffman, Lee & Co., dated the 15 day of March, 1873, & exhibited by the plaintiff in interrogatory 251, & say if there is anything upon it to show where it was executed.

507 It was executed in the county of Pittsylvania, Va., before Maj. Ben. Green, notary public.

418. How far did the notary public live from the town of Danville?

I think it some 10 miles, or probably 12.

419. Does that deed contain the terms of the settlement proposed by R. G. Hoffman through you to Jas. R. Millner, as you have deposed in answer to question 179?

In substance I think it does.

420. Before they came to terms, as you have stated, had Mr. Hoffman & Jas. R. Millner disagreed upon the amount of the indebtedness?

They had.

421. Who were Messrs. Robertson & Green?

They were attorneys here in this town—I think Messrs. Hoffman & Lee attorneys.

422. Was that deed drawn by those attorneys?

I think so; I don't know the handwriting.

423. When the different customers of Hoffman, Lee & Co. met the latter here in Danville on the occasion spoken of did Jas. R. Millner & Mr. Hoffman speak at all before the terms of their settlement were agreed upon?

508

If they did I don't know it.

424. At what price did J. R. Millner's Extra Golden Twist sell in the Baltimore market in 1874?

70c. by the wholesale—say 25 or 50 boxes. A. Seemuller & Sons got that for us.

425. You have said that you told Mr. Hoffman that you would buy the property taken by him in the settlement with Jas. R. Millner if J. R. Millner would buy it of you. The contract by which Millner Bros. agreed to buy the property was made in Baltimore March 5th, 1873, & you have said that the negotiations for the purchase by Millner Bros. was begun by you & completed by your brother, J. T. Millner. Are you certain that you told Mr. Hoffman that you would buy it if you could sell it to Jas. R. Millner?

Yes, sir.

426. Where were you & Mr. Hoffman when you told him?

509 I was in the city of Baltimore, I think.

427. Did you say anything to him here?

I might have done it. I don't know. I know he made the proposition, & I told him I didn't know.

428. Was anything said about it when you all met here to settle, as you have deposed?

I don't think there was at that time.

429. Did you tell him that Jas. R. Millner had agreed to buy it?

Yes, sir.

430. Did he express any surprise that J. R. Millner could buy it?

He did not.

431. Did you inform him that J. R. Millner had bought it after the fact?

Yes, sir; we informed him by letter, & my brother, J. T., told him in Baltimore.

432. Did you tell him what J. R. Millner had paid for it?

Yes, sir; we told him what he had agreed to pay us for it.

510 433. Did he say anything about J. R. Millner having surrendered all of his property to him to satisfy his indebtedness?

He never did.

434. At what time did J. R. Millner agree to purchase the property?

Some time in the spring of 1873, I think.

435. You say in answer to question 285 that you did not know of your own knowledge that Mr. Hoffman did not demand & J. R. Millner agree to surrender on the 28th of Feb'y, 1873, all of his property as a basis of settlement. Did Mr. Hoffman propose such terms to you as a negotiation between him & J. R. Millner at the time you met in Danville?

He proposed that Jas. R. Millner make him a right & title to the place & fixtures that he held a mortgage on. No; he did not propose such terms to me.

436. Did J. R. Millner agree to such terms when you bore his answer to Mr. Hoffman at the same time?

He did not.

511 437. Did Hoffman, Lee & Co. know that Jas. R. Millner was working tobacco with Millner Bros. in 1873?

He must have known it, for he was at our factory. It was no secret. Jas. R. was there every two or three days, & as well as I recollect we wrote him & told him so, & he must have known it himself, for he was there in '74 & may have been there in 1873.

438. Did the three men work largely that year?

Yes, sir; & used Jas. R. Millner's caution notice as proprietors of factory No. 93.

439. Look at question 304 & your answer to it & say if you understood to what settlement the question referred.

I understood that it referred to the settlement of Jas. R. Millner; that, considering upon a basis of the settlement made with Millner Bros., *that* the settlement with Jas. R. was a fair settlement.

440. The deed shown you from J. R. Millner & wife to Hoffman, Lee & Co. shows the indebtedness of J. R. Millner to them to

512 have been over $15,000.00 & that the property conveyed was not worth that much. Were you or not afraid that if J. R. Millner shipped other tobacco to Hoffman, Lee & Co. they would hold it to satisfy the difference?

(Objected to as leading & suggestive.)

Yes, sir; it was, & I wanted it over his signature that he would not do it.

442. At the time you all met in Danville for a settlement who

first proposed to settle, as you have deposed—Hoffman or J. R. Millner?

Hoffman.

And further the deponent saith not.

J. P. MILLNER.

Witness:
F. F. BOWEN, *Com'r.*

In witness whereof I have hereunto set my hand & seal this 12th April, 1886.

F. F. BOWEN, *Com'r.* [SEAL.]

Expenses of commission:

Defendants		$60 50
Trip to Staunton	$20 00	
Cash of A. M. Aiken	5 50	
		14 50
		$75 00

513 The foregoing is a true copy of the depositions taken by me as commissioner appointed by the superior court of Baltimore, Md.

It is agreed by counsel for the parties that fifteen thousand five hundred & thirty-one dollars is the total assessed value of Jas. R. Millner's property, real & personal ($15,531.00).

Commissioner's fee:

53 h'rs @ .75 ---------- $39 75

Copy.

The Testimony of D. B. Conrad & Others, Taken at Staunton under the Foregoing Commission.

OFFICE OF THE SUPERINTENDENT WESTERN
LUNATIC ASYLUM, STAUNTON, VA., *28th April*, 1886.

The witness, D. B. CONRAD, being first duly sworn, deposes & says:

(Present, no one save witness & commissioner.)

(Interrogatives propounded by A. M. AIKEN, written out & carried over by comm'r.)

514 1. State your age, residence, & occupation.

Age, 55; residence, Staunton, Va.; occupation, superintendent of the insane asylum at Staunton.

2. State to what extent you have had experience with insane persons, if any. Let your answer embrace the time prior to your assuming charge of the asylum as well as since.

Since 1870 I have been connected with the insane; for four years

in charge of the insane asylum at Richmond; the Central Asylum since that time up to the 1st April, 1886. I was in private practice solely as an alienist, which word means practice solely upon diseased minds. Then, from 1st April, 1886, I have been in charge of the Western Asylum. Frequently I would in my private practice be sent for to take charge of insane persons & take them to the asylum. I would be consulted as to their treatment, whether they should be treated privately or sent to public asylums, & when
515 treated privately I took charge of them. That was principally in Winchester & vacinity. Altogether, in hospital & private practice, I have seen & treated every phase of insanity.

3. Is Jas. R. Millner a patient confined in the asylum of which you are the superintendent? If yea, state from your own knowledge or of the records of the asylum when he was received there & from what place.

He is a patient under me, & from the records of the asylum he was received here 26 October, 1885, from Pittsylvania county; age, 50; married, & a tobacconist, & this is his first attack, & he had been insane about two years from date of his admission.

4. Is he insane?

He is.

5. Will you please give your opinion of his mental & physical condition at present & state any of the symptoms of his disease; his capacity for rational action, powers of reason, memory, &c.; any delusions of mind he may have, & his probable length of life?
516 Physically I should say he is a very sick man, not at all healthy, & no physical vigor. In frequent conversations he has told me the causes of it were whiskey, tobacco, & women; the abuse of thoes three. He has no specific disease, just a general decay of the system. Mentally, as a general thing, his mind pertakes of the condition of his body—general deterioration, just as described above in regard to his body, conjoined with decided delusions, first, in regard to his pecuniary affairs; 2nd, in regard to his religion; very simple in conversation & very talkative; repeats questions, & all his symptons indicate imbecility. He walks around the grounds in an aimless way, singing to himself, & if he meets you 20 times a day he will ask what time it is. His whole life seems to be aimless. He winds up his conversations, every sentence, with, "By the help of God I hope to get well," & then walks off.
517 He gets violently excited upon the introduction of the subject of his pecuniary affairs. The mere mention of them deprives him of all reason. He has no capacity for rational action & no powers of reason whatever. In regard to his memory, if he begins a statement it is disjointed & disconnected. You cannot rely upon anything he states from memory. There is no thought whatever. He looses the chain of connection. His term of life, in all probability, is very short. There is no prospect of his ultimate recovery. He is classed by us as one of the incurables, & we think he will die here. If he was thrown into the outside world, aside from the quiet systematic life here, his life would be exceedingly short.

6. Will you allow the commissioner to copy the commitment of Jas. R. Millner?

The clerk of the asylum had a certified copy of the order of the court, as we term it, & sent by mail on 26 April, 1886, to A. M. Aiken, of Danville.

518 And further the deponent saith not.

D. B. CONWAY (*Sic*),
Sup. W. L. Asylum.

Witness:
F. F. BOWEN, *Comm'r.*

The witness, C. J. ARMISTEAD, being first duly sworn, deposes & says:

1. Did you copy & mail to A. M. Aiken the commitment of Jas. R. Mill[illegible] to this asylum as a lunatic?

I did, sir, to Judge Aiken.

And further this deponent saith not.

(The copy of the commitment above alluded to is filed & marked Ex. "C. J. A.")

C. J. ARMISTEAD, *Clerk.*

Witness:
F. F. BOWEN, *Com'r.*

In witness whereof I have unto set my hand & seal the 29 April, 1886.

F. F. BOWEN, *Com'r.* [SEAL.]

Expenses:

Defendants	$20 00
By $5.50 from A. M. Aiken	5 50
	$14 50

A copy.
Teste:

F. F. BOWEN,
Com'r for U. S. C't.

Endorsed as follows, viz.: Hoffman, Lee & Co. *vs.* J. R.
519 Millner & *als.* II, pp. 81–164. Defendants' continuation. Depositions of J. P. Millner, D. B. Conrad, and C. J. Armistead. (Copy for U. S. c't.) Filed June 10th, 1886. Chas. Martin, clerk.

And again, on the same day, to wit, on the 10th day of June, 1886, the following exhibit was filed in the above cause of Hoffman, Lee & Co. *vs.* Jas. R. Millner & *als.*; which said exhibit is in the words & figures following, to wit, & is marked Exhibit "J. P. Millner, No. 2," viz:

PITTSYLVANIA COUNTY, *To wit:*

To Wm. Minter, of said county:

Whereas, upon complaint of J. P. Millner, this day made to me, R. J. Hatcher, a justice of said county, I have good reason to sus-

pect that James R. Millner is a lunatic and ought to be committed to an asylum: These are therefore to command you in the name of the Commonwealth forthwith to take the body of the said Jas. R. Millner & bring him before me, at J. R. Millner's residence, in said county, on the 18th day of May, 1885, that he may be examined touching his lunacy, & to be further proceeded with ac-
520 cording to law; and you are hereby required to request two other justices of the said county to be there to enquire with me whether the said J. R. Millner be a lunatic, &, further, to summon Dr. Harvey to attend at the same time & place as witness to testify touching the lunacy of the said Jas. R. Millner.

Given under my hand and seal this 18th day of May, 1885.

R. J. HATCHER, *J. P.* [L. S.]

This is the paper filed by J. P. Millner as Ex. "J. P. M. No. 2."

F. F. BOWEN, *Comm.* (*for U. S. C't*).

Endorsed: Ex. "J. P. M., 2." F. F. Bowen, com'r. (Copy.) Filed June 10th, 1886. Chas. Martin, clerk.

The following was filed on the same day in the above cause, viz., on the 10th day of June, 1886, & is marked Ex. "C. J. A.," & is in the words and figures following, to wit:

Copy of "Ex. C. J. A."

R. C. Payne is hereby deputized in place of the sergeant to take charge of and deliver the patient to the asylum.

521 STATE OF VIRGINIA, *Town of Danville,* } *To wit:*

To the sergeant of said town & to the superintendent of the lunatic asylum at Staunton, Va.:

Whereas Jas. R. Millner, who is suspected of being a lunatic, was this day brought before us, W. P. Graves, Jno. A. Smith, & H. A. Wiseman, three justices of the peace of said town, to inquire whether he be a lunatic; and whereas, upon the testimony of witnesses, it appears to us that he is a lunatic and a citizen of this State and ought to be confined in the lunatic asylum; and whereas the friends of the said James R. Millner desire that he should be forthwith sent to an asylum:

We do, in the name of the Commonwealth, command you, said sergeant, to carry the said Jas. R. Millner to the asylum at Staunton, that being the nearest asylum to us, & there deliver him, together with this warrant, to the superintendant of said asylum, & you, the said superintendant, are required to receive into said asylum
522 and into your care & charge the said James R. Millner, to be treated and taken care of as a lunatic; and we do with this warrant transmit to you the interrogatories and answers thereto, taken in writing by us, touching the lunacy of said James R. Millner.

Given under our hands this 24 October, 1885.

H. A. WISEMAN, *J. P.*
WM. P. GRAVES, *Mayor.*
JNO. A. SMITH, *J. P.*

STAUNTON, VA., 4, 24, 1886.

This day personally appeared before me, a notary public for the city of Staunton, C. J. Armistead, clerk of the Western Lunatic Asylum, and made oath that the foregoing is a true copy of the order of court by which James R. Millner was received into said asylum.

GEORGE HUSTON, *N. P.*

A copy.
Teste:

F. F. BOWEN,
Com'r (for U. S. Court).

Endorsed as follows, to wit: This is the Exhibit "C. J. A." referred to by C. J. Armistead in his deposition. F. F. Bowen, com'r.

523 *Copy Ex. "C. J. A." (for U. S. C't.) Filed June 10, 1886.*
Chas. Martin, Clerk.

And on another day, to wit, on the 19th day of July, 1886, the following depositions for defendants, of J. H. Estes & Grief Lamphin, *was* filed in the above cause of Hoffman, Lee & Co. *vs.* Ja's. R. Millner *et al.*; which said depositions are in the words and figures following, to wit:

The deposition of Grief Lamkin and others, taken before F. F. Bowen, a commissioner in chancery of the hustings court of Danville, Va., on the 20 August, 1886, at the office of said com'r, to be used as evidence on behalf of the defendants in the suit of Hoffman, Lee & Co. *vs.* J. R. Millner's Committee, now pending in the U. S. circuit court at Danville.

Present: A. M. Aiken, for def'ts; J. P. Harrison, for pl't'ffs.

The witness, GRIEF LAMKIN, being first duly sworn, deposes and says:

By A. M. AIKEN:

524 State your name, residence, & occupation.

Grief Lamkin; Danville, Va.; auditor in the internal revenue office.

2. Can you find in the office of which you are the auditor any record of the purchase of tobacco manufacturers in Pittsylvania county for the years 1871 & 1872?

I have examined the records of the office & can find none previous to 1874.

3. Are you able to state where the records of the years previous to that time are?

I am not.

And further the depone-t saith not.

GRIEF LAMKIN.

The witness, J. H. ESTES, being first duly sworn, deposes & says:

4. State if you know James R. Millner & whether he is a married man, when he married, & whether his wife is now living.

Ye-. His wife is now living. I don't know the exact time
525 he was married. He was married just before or during the war, I think. He has been married upwards of 20 years.

And further this deponent saith not.

J. HOWARD ESTES.

Taken, subscribed, & sworn to before me on this 20 Aug., 1886.

F. F. BOWEN, *Com'r.*

Com'r's. fee, 75c.

Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* J. R. Millner's Com., def'ts. Dep'n of J. H. Estes. Filed July 19, 1886. C. Martin, clerk.

And again, on the same day, to wit, on the 19th day of July, A. D. 1886, the following deposition of W. I Overbey was filed in the above cause of Hoffman, Lee & Co. *vs.* Jas. R. Millner *et al.*; which said deposition is in the words and figures, following, to wit:

The deposition of W. I. Overbey, taken before me, C. W. Throckmorton, a notary public for the county of Pittsylvania, Virginia, this 19th day of July, 1886, at Chatham, in said county, by
526 consent, without notice, to be read on behalf of the said Overbey as committee of Jas R. Millner, a lunatic, in a suit pending in the circuit court of the United States, at Danville, Virginia, in which Hoffman, Lee & Co., of Baltimore, Maryland, are plaintiffs, and the said Committee & *als.*, are defendants.

Present: A. M. Aiken, for the committee. Present: Jas. P. Harrison, for the plaintiffs.

The witness, W. I. OVERBEY, being first duly sworn, deposes & says:

By A. M. AIKEN:

Quest. 1. State your name, residence, & occupation.

Ans. W. I. Overbey, Chatham, Va.; sheriff of Pittsylvania county.

Quest. 2. State whether you are the committee of the defendant to the above-mentioned suit—James R. Millner, a lunatic.

Ans. I am.

Quest. 3. As such committee have you received & have you in you- possession any books, papers, correspondence, or documents of any kind relating to transactions by the said James R. Millner with the said Hoffman, Lee & Co.?

527 Ans. I have none except the contract of Feb'y 28th, 1873, which I delivered to my counsel, and a copy of which, I understand, was exhibited in the cross-examination of Jas. P. Harrison in this case.

Quest. 4. State if you know the amount or value of estate be-

longing to the said Jas. R. Millner now held by any attachment in the State of Maryland and in whose hands said estate is.

Ans. I have been informed by Jas. P. Pleasants & Sons, of the city of Baltimore, that they had about $2,000.00 belonging to Jas. R. Millner, which had been attached by Hoffman, Lee & Co. I herewith file acc'ts current from John P. Pleasants & Sons, marked Overbey No 1.

Quest. 5. Are you able to control or use any portion of that sum for or on behalf of the family of the said Millner or in defence of this suit?

Ans. I am not.

Quest. 6. Have you received or are you continually receiving any funds in money belonging to the estate of said Millner; if so, from what sources, how much, & what have you done with them?

528 Ans. I have only received about $100.00, which I paid out in taxes & costs of administration.

Quest. 7. Has said Jas. R. Millner any estate, except his real estate involved in this suit, from which you have been or are able to realize any money?

Ans. He has none.

Quest. 8. State the size of his family and its condition, if you know it.

Ans. He has a wife & from six to eight children; the family is in rather destitute circumstances.

And further this deponent saith not.

W. I. OVERBEY.

STATE OF VIRGINIA, *County of Pittsylvania,* } *To wit:*

I, C. W. Throckmorton, a notary public for the county & State aforesaid, do certify that the foregoing deposition of W. I. Overbey was duly taken, subscribed, & sworn to before me at the time and place and for the purpose mentioned in the caption.

Given under my hand this 19th day of July, 1886.

C. W. THROCKMORTON, *N. P.*

529 Fee, $1.00, paid by W. I. Overbey, committee.

Endorsed as follows, to wit: No. 37. Ch. C. Hoffman, Lee & Co. vs. W. I. Overbey, com., & *als.* Deposition of W. I. Overbey. Filed July 19, 1886. Charles Martin, clerk.

The following exhibit was filed with the foregoing deposition & is marked Overbey No. 1, & is in the words and figures following, to wit:

Mr. James R. Millner in account w. John P. Peasant & Sons.

1886.			
March	12. By net proceeds sales of 11 boxes tobacco, due May 30, 1886	$147 86	
"	" By net proceeds sales of 150 boxes tobacco, due May 30, 1886	2,008 72	
"	" By net proceeds sales of 241 boxes tobacco, due May 30, 1886	3,273 26	
			5,429 84

CONTRA.

1885.				
December	31.	To balance due by him this date, as per acc't rend.		3,327 51
1886.				
March	22.	" interest on $3,327.51 from Dec. 31, '85, to May 30, '86	83 20	
				3,410 71
Balance due to him 30 May, 1886				$2,019 13

E. & O. E.
Baltimore, 22 March, 1886.

JOHN P. PLEASANTS & SONS.

The foregoing statement of account is endorsed as follows & was filed with W. I. Overbey's deposition, to wit, "Overbey No. 1."

530 And again, on another day, to wit, on the 25 day of August, A. D. 1886, the parties having appeared in open court, the following decree was made & entered; which said decree is in the words & figures following, to wit:

HOFFMAN, LEE & Co.
vs.
MILLNERS. } Aug. 25, 1886.

Upon application of J. P. Millner, which was resisted by complainants, he has leave to file his answer in this cause, & it is accordingly done, but it is ordered by the court that said J. P. Millner pay the costs that have accrued in this cause incident to the proceedings against him up to this time; and upon the motion of the plaintiffs in this cause the same is continued until the next term of this court, and leave given to the said plaintiffs to file within the next thirty days from the rising of this court, in the clerk's office of this court, their general replication to the answer of J. P. Millner filed as above, & upon motion of plaintiffs they have leave to file their
531 replication to the answer of J. R. Millner's committee, which is accordingly done.

(Signed) JOHN PAUL, *Dist. Judge.*

Endorsed as follows, to wit: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Millners. Order. Aug., 1886. Entered on Chancery O. B., p. 24, & filed Aug. 25th, 1886. Chas. Martin, clerk.

And on the same day, to wit, on the 25th day of August, A. D. 1886, the following answer of J. P. Millner in the above cause was filed in open court; which said answer is in the words & figures following, to wit:

The answer of John P. Millner, surv'g partner of Millner Bros., to the bill of complaint exhibited against him as such surviving partner & *als.*, in the circuit court of the United States for the western district of Virginia, at Danville, Va.

This respondent, saving, &c., says that the bill of complain-
532 ants is not sufficient in law, and now, for answer to so much

of said bill as he deems it important that he should answer, says that he admits the statement of agreements between the plaintiffs and Jas. R. Millner set out in the complainants' bill only so far as they are corroborated by written memoranda in the shape either of the original agreements or certified copies of them, being satisfied as this respondent is that all said agreements were in writing, which, or copies of them, were in the hands of complainan-s. To the extent that these allegations are no- so corroborated respondent denies them and calls for strict proof.

Respondent denies that James R. Millner upon any settlement with complainants ever admitted that he owed them as of 23 January, 1873, $23,360.61, subject to credits for stock, &c., as stated in the bill.

The fact is that complainants claimed that he owed them that sum. He, however, denied it, and denied, furthermore, that
533 upon a fair and just settlement with them that he owed complainants anything. Upon this question they were widely at difference and were contending bitterly, when, *on* Feb'y or March, 1873, they agreed to compromise & settle it as hereinafter stated. It is not true, as complainan-s allege, that James R. Millner offered as a compromise to surrender to them all the property he was worth or owned in settlement of what he owed them, & that he would go into bankruptcy if they did not accept it. It may be that he told them what they claimed was more than he was worth, as was the case in respondent's judgment, and that if he had to pay it it would bankrupt him. Respondent thinks he heard him say as much. He never, however, admit-ed, but, on the contrary, always denied, the justice of complainants' account and refused to admit it or pay it. In this condition of the dispute between complainants and J. R. Millner about their claim against him complainants themselves, through R. G. Hoffman, acting for them,
534 proposed to take a fee-simple conveyance of the property, which was then only mortgage- to them, and the unsold tobacco they had on hand of Jas. R. Millner's in full settlement of their claims against him. This proposition was made by said Hoffman to this respondent to be, and it was, communicated to James R. Millner and was accepted by him. The wife of Jas. R. Millner, who had not united in this mortgage, was to unite in the deed to perfect the fee-simple conveyance to him as one of the conditions of this compromise settlement. James R. Millner distinctly refused to give in compromise of complainants' claim anything more than the fee-simple conveyance of the mortgaged property, and was careful when the papers to effect this compromise were drawn to see that they accomplished this & nothing more. In arriving at this adjustment of their difference complainants and Jas. R. Millner came to no agreement as to what the true status of the accounts be-
535 tween them was, but while disputing upon this point the agreement to settle the whole difference in the manner before herein stated was agreed upon. After the settlement was agreed upon it was drafted into shape by the deed of the 15th of March, 1873, but respondent does not know how the amount of the indebt-

edness came to be recited in that deed as being $15,758.67, unless it was that the parties having agreed upon a final and lumping settlement of the whole difference between them in the manner aforesaid had then no longer any interest to controvert or dispute about what the true amount was, nor did the complainants condition the settlement upon what they should get for the tobacco then in their hands unsold and taken by them in the settlement. They took the tobacco and the property before stated in settlement of their claim, the amount and justice of which was disputed, and the proposition to settle it in this way came from them & was accepted by J. R. Millner.

536 It is not true that J. T. Millner had been sent to Baltimore on the part of J. R. Millner to confer with complainants and arrange with them as to the storage & sale of his tobacco in their hands, and was thus fully advised of the standing of James R. Millner's affairs. He had no knowledge of the standing of them, but respondent well knows that he believed them to be altogether different in standing from what was represented by complainants. J. T. Millner was often in Baltimore, but it was upon the business of himself and this respondent as Millner Bros., not upon the business of James R. Millner. It is true that after complainants got this property from J. R. Millner & wife they sold it to Millner Bros. for 16,000 lbs. of manufactured tobacco of the brand and grade stated in the bill. Millner Bros. at that time estimated that this tobacco was worth $10,000.00 to $12,000.00. This respondent and Jas. T. Millner, however, had no use for this property and they would

537 not consent to buy it, though complainants were offering it to them, holding it at $16,000.00, until they ascertained that if they bought it they could pay for it with 16,000 lbs. of tobacco, and that Jas. R. Millner would then give J. P. Millner, your respondent, and J. T. Millner $6,000.00 for their shares in it or in the tobacco that should pay for it, for it was contemplated that the tobacco would be worked by your respondent, Jas. T. Millner, & Jas. R. Millner, and that Jas. R. Millner would pay one-third of the price of the property in his one-third of the tobacco, and then pay your respondent & Jas. T. Millner $6,000.00 for their shares, thus making the property stand him at $9,000.00 at the rate the realized for their shares in the tobacco sold this way. Of all this complainants were fully advised as the negotiations progressed. Nothing of it was kept from them, and this respondent knows of no reason why it should be. Respondent denies that Jas. R. Millner represented the real estate which he conveyed

538 to secure complainants in 1871, Feb'y 13th, to be worth $15,000.00. Complainants held it at $16,000.00 when trying to sell it to Millner Bros, in 1873, but Jas. R. Millner never put any such estimate on it. Its value was not made a matter of much consideration, respondent imagines. When the deed to secure the advances was given, in 1871, James R. Millner and complainants both then supposed, the respondent imagines, that complainants would have ample security for their advances and there would be margin for good "profit" to Millner in the tobacco he should work and ship

to complainants. It is not to be presumed that Jas. R. Millner would have embarked in the business if he had not thought so. Respondent is of opinion that he, J. R. Millner, did not regard the property as then worth more than $10,000.00, and his estimate of it was just as high when Millner Bros. afterwards bought it from Hoffman, Lee & Co., and what they paid was an equivalent for that
539 sum, as this respondent has shown above. They believed that they were realising in this way less for their tobacco than they could get for it on the market, but to do this was an accommodation to Hoffman, Lee & Co., and also they saw their way out of the sale to J. R. Millner, their brother, and for these reasons Millner Bros. were willing to and did make the transaction; that the purchase of this land by Millner Bros. from complainants was part and parcel of a fraud, as they allege in their bill, is wholly untrue & without the shadow of foundation. In fact, the allegation made by complainants that there existed at that time or at any time a conspiracy between Millner Bros. & Jas. R. Millner to wrong or defraud them, and every allegation that charges this respondent or Millner Bros. with any such purpose, design, or effort or with knowledge of any such purpose or effort on the part of James R. Millner or any one, is utterly untrue and is a gratuitous
540 insult to and slander of Millner Bros. by complainants. Respondent does not believe and hence denies that Jas. R. Millner misapplied or set aside for his own use one dollar of the money advanced him by complainants; on the contrary, he believes and hence asserts that Jas. R. Millner applied faithfully the money they advanced him & faithfully carried out his agreement with complainants. Jas. R. Millner had, respondent is satisfied, a considerable sum of money of his own at the time he agreed with complainants for advancements. He had worked tobacco & successfully for several years previous thereto, & the profit to him from these operations had been good. He purposed & did operate largely in 1871 & 1872, & the advances he arranged for with complainants were designed to supplement the money he himself already had & enable him to operate more extensively. The operations of said
541 James R. Millner in 1871 & 1872 were largely carried on, this respondent believes and hence charges, with money he had before getting advances from complainants, & if he had any money when he settled with complainants it was, this respondent believes, less than he had before getting advances from them. Respondent denies that Jas. R. Millner misapplied or set aside for himself or appropriated to his own use any of the money advanced him by complainants; on the contrary, he is satisfied that he faithfully applied it all in working tobacco as he agreed, & that all the tobacco so worked with it was shipped in good faith by him to the complainants. If Jas. R. Millner had $12,000.00 or any other sum of complainants' money or money rightfully belonging to them when they settled this respondent did not then nor does he now know it or believe it. He is satisfied that Jas. R. Millner had considerable money before he began getting advances from complainants, & that he ought to have had same at the time of

his settlement with complainants. He knows also that
542 complainants claim that his operations through them were disastrous to him, & that after getting all the tobacco purchased & worked by him with the advancements they made him & the benefit of its proceeds they claimed he owed them largely, which he disputed, & that, to settle the dispute, they agreed that they would accept & he — that he would give them the property, which was done, as a full compromise settlement. Millner Bros. (composed of Joseph T. Millner & your respondent) and Jas. R. Millner in 1873, after — & complainants compromised, worked tobacco in copartnership, J. R. Millner contributing $7,000.00 to the business & having ⅓ interest in it. He also in 1873, after that compromise, engaged with Millner Bros. in the mercantile business & contributed $5,743.33 to it. This money was given to J. T. Millner for the purpose of this business in the absence of this respondent. It
543 is not true that these transactions were entered into by this respondent or by Millner Bros. with any purpose to wrong or defraud complainants or with any knowledge of any such purpose on the part of Jas. R. Millner or with any knowledge that Jas. R. Millner was in complainants' debt. Complainants were informed during all their negotiations to sell the property to Millner Bros. that Jas. R. Millner was or would be interested with them in their business, & they well knew when they sold the property to them for sixteen thousand pounds of tobacco that Jas. R. Millner would be a third owner of the tobacco, & that the $6,000.00 he would pay them would be for this respondent's & Joseph T. Millner's interest in it. What the tobacco netted complainants this respondent does not know nor is it material to the cause. Complainants took the tobacco for the property. If they only got what the- say for it they sacrificed it. It was tobacco of a grade for which Jas. R. Millner had realized from 90c. to $1.10 per pound on the market, and at this price it should have brought complainants $10,000.00
544–554 & over free of tax.

Respondent denies that the property was bought with complainants' money, and he denies that any of the conveyances of it are void, and he denies that there is any trust resulting in their favor with reference to it. In the settlement between complainants and Jas. R. Millner they only abated from their demand against him about in the same propo-tion that they did from other manufacturers in the same locality who disputed their accounts & with whom they also compromised. For example, they claimed of Millner Bros. $6,700.00 & compromised at $4,200.00.

Respondent denies that there is any justice in complainants seeking to renounce and disregard the settlement they made with J. R. Millner, & there is no good excuse for their endeavoring to justify it upon the alleged admissions and revelations made to them by Jas. R. Millner in person and through his alleged counsel, R. W. Peatross. It is not true that R. W. Peatross was ever counsel for Jas. R. Millner to make any such admissions, nor is it true
555 that he ever made such or wrote the postal & letter exhibited with the bill as counsel for said Millner. Those exhibits were

written by said Peatross individually and not as a lawyer, but as a private friend of & at the request of J. R. Millner. Said J. R. Millner was himself at the time those papers were written & had been for a long time before & has been ever since an insane man & believed to be on the verge of the grave. Among a number of delusions under which he was then laboring was one that he had wronged complainants, & it seemed to give him a great deal of annoyance. It was at his request & in the hope that it might in some way relieve his mind that Mr. Peatross, out of compassion for the distressing condition of Jas. R. Millner & in the hope that possibly it might have the effect to remove from Millner's mind this delusion & thus perhaps prolong the life of a doomed man, that he wrote said exhibits. The facts with refference to these exhibits & how they were written complainants could have learned
556 by simply enquiry of Mr. Peatross, whom they appear to have had repeated opportunities of seeing, but did —. They might also have learned that instead of being worth $50,000.00 to $75,000.00 Jas. R. Millner is not, in all probability, worth more than $8,000.00 to $10,000.00, perhaps, above his indebtedness, & that his family is a most helpless & dependent one. This respondent knows nothing of the truth of the allegations in the bill as to the occurrencies subsequent to complainants receiving the communications from Mr. Peatross. He denies the plaintiffs' right to any relief in this suit. Specially does he deny that they have any right to relief from or just cause of complaint against this respondent or the firm of Millner Bros. in this suit. All such claims by them are unjust & iniquitous; & now, having fully answered, respondent prays to be hence dismissed with his costs; &, as in duty bound, he will ever pray, &c.

(Signed) J. P. MILLNER.

U. S. commissioner's office, Danville, Va.

557 This day personally appeared before Alfred C. Lewis, U. S. commissioner for west. dist. of Va., J. P. Millner and made oath that the matters and facts contained in the foregoing answer, so far as they depend upon his own knowledge and — & so far as they depend upon information derived from others he believes them to be true.

Given under my hand this 24th day of June, 1886.

ALFRED C. LEWIS,
U. S. Commissioner, West. Dist. of Va.

Endorsed as follows: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Jas. R. Millner, &c. Answer of J. P. Millner. 1886, Aug. 25th. Filed in open c't by leave of court. A. C. Lewis, D. C.

And again, on the same day, to wit, on the 25th day of Aug., A. D. 1886, the following replication of complainants was filed in the above cause; which said replication, with its endorsement, is in the words & figures following, to wit:

558 The general replication of complainants, Hoffman, Lee & Co. to the answer of Wm. I. Overbey, committee of Jas. R. Millner, lunatic, filed in the chancery suit of Hoffman, Lee & Co. *vs.* James R. Millner & others, in the circuit court of the United States for the western district of Va., at Danville, pending.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters & thing these repliants are and will be ready to aver and prove as the honorable court shall direct,
559 and humbly pray as in and by their said bill they have already prayed.

HOFFMAN, LEE & CO.,
By BERKELEY & HARRISON,
GREEN & MILLER, *Att'ys.*

Endorsed as follows, to wit: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* J. R. Millner & others. Ch'y. Replication of complainants. 1886, Aug. 25th. Filed in open c't by leave of c't. Chas. Martin, cl'k.

And on another day, to wit, on the 13th day of November, A. D. 1886, the following replication of Hoffman, Lee & Co. to answer of J. P. Millner was filed; which said replication is in the words & figures following, to wit:

U. S. Circuit Court, at Danville, Va.

HOFFMAN, LEE & CO.
vs.
MILLNER & *als.* } Ch'y.

The general replication of Hoffman, Lee & Co., complainants, to the answer of John P. Millner, surviving partner of Millner Bros., defendant, filed in the above-styled chancery cause.

560 These repliants, saving and reserving to themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to

aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOFFMAN, LEE & CO.,
By COUNSEL.

Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Millner & *als.* Ch'y. Replication of Hoffman, Lee & Co. to ans. of J. P. Millner. Filed Nov. 13, 1886. C. Martin, clerk.

561 And again, on another day, to wit, on the 13th day of May, A. D. 1887, the following opinion of Judge Bonds was received and filed with the papers in the above cause of Hoffman, Lee & Co. *vs.* J. R. Millner & *als.*; which said opinion is in the words and figures following, to wit:

In the Circuit Court of the United States, Western District of Virginia. In Equity.

HOFFMAN, LEE & CO.
vs.
MILLNER *et al.*

This is a bill filed to set aside and declare null and void certain deeds and releases made by J. R. Millner to the plaintiffs and the settlement of accounts made between them, because of fraud on the part of J. R. Millner, and for an account.

The evidence taken in the cause is voluminous, but the essential facts necessary to be stated in this opinion are these:

In the year 1871 & 1872 the complainants, being tobacco commission merchants in the city of Baltimore, agreed with the defendant, J. R. Millner, who was a tobacco manufacturer in
562 Virginia, to furnish him the sum of 15,000 dollars per annum, with which Millner was to buy tobacco, manufacture it, and send it to complainants, who were to sell it upon certain terms agreed upon between them.

The accounts of the manufacture and sale of the tobacco so purchased with the capital sum advanced for that year, 1871, seem to have been satisfactory to all parties, and the contract was continued for the year 1872, another advance of $15,000 was made by the complainants to the defendant Millner, and he continued to buy, manufacture, and ship to the complainants according to his contract the tobacco purchased therewith.

These advances of $15,000 in each year were secured to the complainants by mortgage on the property of the defendant Millner.

Toward the close of the year 1872 the defendant Millner, whether justly or otherwise is not important, became convinced that the complainants were not acting toward him in the sale of the manufactured tobacco as diligent, prudent, enterprising commis-
563 sion men should act, and expressed his dissatisfaction not only to them but to others in the trade, who also, some of them at least, had dealings with the complainants. These statements and

complaints of Millner were likely to injure the complainants in their business, and they therefore sought opportunity to do away with Millner's dissatisfaction, which they claimed was unfounded in reason, and to have an adjustment of their accounts and a settlement with him.

This adjustment and compromise was made in February, 1873. The complainants contended that the defendant, James R. Millner, was largely indebted to them upon the business done through them, and Millner claimed that he was not indebted, but that complainants were indebted to him, because their mismanagement of the business had occasioned him great loss. Whatever may have been the merits of this unhappy controversy, it was finally settled at the time above stated.

Millner agreed that complainants should take to their own
564 use all the tobacco on hand which had been consigned to them, and that he would convey the mortgaged property in fee to complainants, and the complainants agreed, this being done, to release Millner from all claims and demands arising out of their transactions.

Millner's wife, not being a party to the mortgage, became a party to the conveyance to release her claim for dower.

The bill in this case appears by the endorsement of the clerk to have been filed on the thirtieth of June, 1885, though, by the certificate of the notary, it was not sworn to until the 26th of June, 1886.

However this may be, the settlement made and executed by and between the parties on the 28th of February, 1873, remained undisputed and unchallenged for at least twelve years.

It is now sought to set it aside on the ground of fraud, and this fraud arises from a misrepresentation on the part of Millner
565 at the time of the settlement that the assignment made by him and his wife was a conveyance of all his property to the complainants, and is further shown from the statements of Millner, made when he was very ill, and subsequently confirmed by his own conversations at Lithia Springs, a watering place in Virginia, whither he had gone for his health and was supposed to be convalescing.

As to the first ground of the fraud, it is completely refuted by the fact that on the very day of the settlement Mr. Hoffman, one of the complainants who negotiated the compromise, offered to reconvey the property assigned to J. R. Millner for $10,000, $2,000 of which was to be paid in cash, and by the further fact that the terms of settlement finally agreed upon were proposed by Mr. Hoffman before he had an interview with the defendant Millner.

We do not hold, as the complainants' counsel charge in their brief defendants' counsel do, that because a person is convinced there can be no genuine repentance without restitution he is necessarily
566 insane. We think, on the contrary, if it were more generally preached that one could not "be pardoned & retain the offense," while there might be fewer conversions there would be more genuine repentence."

In this case, however, the proof shows that the defendant Millner

was very ill and abed when he first alluded to this matter; that he was at the Lithia Springs for his health when the confession of his dishonesty was made, whatever that was, for no two statements of his confession are alike, and the medical testimony goes far to show that he had serious mental disorder during the greater part of the year 1885, and grew worse and worse until he became hopelessly insane, and was confined in a lunatic asylum, where he now remains.

To grant the relief prayed in the bill the complainants must show actual, positive fraud, and that, as it is alleged in the bill, so far as the proof goes, there was every reason why the complainants'
567 settlement of February 28th, 1873, should be made. It was made mainly upon the terms suggested by the complainant Hoffman. The property mortgaged to secure complainants' advances was conveyed to them free from the wife's dower. The tobacco on hand in their warehouse at Baltimore unsold was assigned to them. Millner was released, which was what he sought, and the reputation of the complainant among the community of tobacco manufacturers in that part of Virginia for fair, just, and honorable dealing, which the complaints of J. R. Millner tended to injure, was entirely established, which was a consideration to them after getting as much of their advances back as they were able to recover.

There are no facts which show fraud independant of the statements of Millner. On the contrary, they show a settlement of disputed accounts in all ways commendable between merchant & merchant, and go far to show that Millner's later impressions of them when in ill health was an insane delusion.

568 Under these circumstances we are of opinion that the complainants have failed to support the necessary allegations of their bill and it must be dismissed with costs.

(Signed) HUGH L. BOND, *C't Judge.*

Endorsed: No. 37. Ch. C. Hoffman, Lee & Co. *vs.* Millner *et al.* Opinion. Rec'd & filed May 13, 1887. C. Martin, clerk.

And on another day, to wit, on the 24th day of June, A. D. 1887, the following decree was received from Judge Bond in the above cause & was filed with the papers in this suit; which said decree is in the words & figures following, to wit:

In the Circuit Court of the United States, Western Dist. of Virginia.

HOFFMAN, LEE & CO. }
vs.
MILLNER & Others. }

This cause came on to be heard upon the pleadings and testimony taken therein, and, having been argued by counsel, it
569 is adjudged, ordered, and decreed that the complainants therein are not entitled to recover, & that the bill be dismissed with costs.

(Signed) HUGH L. BOND, *C't Judge.*

MEMORANDUM.—Upon the filing of the above decree the complainants, by their counsel, moved the court to allow them an appeal therefrom to the Supreme Court of the United States; which motion, being made in open court, was to them allowed.

HUGH L. BOND, *C't Judge.*

Endorsed: Decree. *In re* Hoffman, Lee & Co. *vs.* Millner and others. Filed June 24, 1887. Charles Martin, clerk.

And on another day, to wit, on the 30th day of June, A. D. 1887, the follow- bond of the plaintiffs in the foregoing cause for costs in said cause was filed with the papers of the case; which said bond is in the words & figures following, to wit:

570 Know all men by these presents that Charles O'Donnell Lee, Frank Frick, and William Checkley Shaw, all of Baltimore city, in the State of Maryland, are held and firmly bound unto William I. Overbey, committee of Jas. R. Millner, lunatic; John P. Millner and J. D. Blair, administrator- of Joseph T. Millner, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid unto the said William I. Overbey, committee as aforesaid; John P. Miller, and J. S. (*sic*) Blair, administrator as aforesaid, their successors, personal representatives, or assigns; to the payment whereof, well & truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 27th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

571 Whereas lately, in the circuit court of the United States for the fourth circuit in and for the western district of Virginia, a decree was passed in said court, wherein Robert G. Hoffman and Charles O'Donnell Lee, trading as Hoffman, Lee & Co., were complainants, and John P. Millner *et al.* were defendants, in equity, in favor of the said defendants, from which said decree the said complainants have prayed an appeal to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next, and it has been granted them:

Now, the condition of the above obligation is such that if the above-bound Charles O'Donnell Lee and the said Robert G. Hoffman shall prosecute their appeal with effect and pay all costs if they shall fail to make good their plea, or which may be awarded against them in said caus-, then this obligation shall be void; otherwise to be and remain of full force and virtue in law.

(N. B.—Over for signatures.)

572 (Signed) CHAS. O'DONNELL LEE. [SEAL.]
" FRANK FRICK. [SEAL.]
" WILLIAM CHECKLY SHAW. [SEAL.]

Signed, sealed, and delivered in presence of—

EDWIN A. LEWIS.

Endorsed as follows, to wit: No. 37. Ch. C. In circuit court United States, western district of Virginia. This bond for costs is approved. (Signed) Hugh L. Bond, c't judge. Received & filed at 1½ p. m., June 30, 1887. Charles Martin, clerk.

CLERK'S OFFICE,
U. S. CIRCUIT COURT, AT DANVILLE, VA.

I, Charles Martin, clerk of the circuit court of the United States for the western district of Virginia, at Danville, Virginia, do hereby certify that the foregoing is a true transcript of the record *In re* Hoffman, Lee & Co. vs. James R. Millner *et al.* In equity.

Given under my hand & seal of court this 22nd day of August, A. D. 1887.

[Seal United States Circuit Court, Western District of Virginia.]

CHARLES MARTIN,
Clerk U. S. C. Ct.

Endorsed on cover: No. 395. W. Virginia C. C. U. S. Robert G. Hoffman and Charles O'Donnell Lee, trading as Hoffman, Lee & Company, appellants, vs. William J. Overbey (committee of James R. Millner, lunatic), John P. Millner, and J. D. Blair, administrator of Joseph T. Millner. Filed September 8, 1887.

Office Supreme Court U. S.
FILED,
NOV 25 1890
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the U. S.

October Term, 1890.

No. 99.

ROBERT G. HOFFMAN, ET AL.,

vs.

WM. J. OVERBY, ET AL.

Appeal from the Circuit Court of the United States for the Western District of Virginia, in Equity.

BRIEF OF THE APPELLANTS.

S. T. WALLIS,
LANDON C. BERKELEY, JR.,
JAMES P. HARRISON,
For Appellants.

JOHN MURPHY & CO., PRINTERS AND STATIONERS, BALTIMORE.

IN THE

Supreme Court of the U. S.

October Term, 1890.

No. 99.

ROBERT G. HOFFMAN, ET AL.,

vs.

WM. J. OVERBY, ET AL.

Appeal from the Circuit Court of the United States for the Western District of Virginia, in Equity.

BRIEF OF THE APPELLANTS.

This is an appeal from a decree of his Honor Judge Bond, sitting in Equity in the Circuit Court for the Western District of Virginia. The appellants, Messrs. Hoffman, Lee & Co., of the city of Baltimore, were plaintiffs below and the defendants were citizens of Virginia.

The bill was filed on the 30th of June, 1885, and will be found on the Record from pages 1 to 11. It charges that the appellants

were commission merchants and dealers in manufactured tobacco in the city of Baltimore, and that a certain James R. Millner was a manufacturer of tobacco, doing business in the county of Pittsylvania, Virginia. It further charges that said Millner, prior to February 13th, 1871, had entered into a contract with the appellants, under which they agreed to advance to said Millner and did advance to him moneys as needed in his business, the same to be used exclusively in the purchase of leaf tobacco to be manufactured and shipped to the appellants and to be sold by them for his benefit after covering such advances. It was an express condition of said agreement that the advances should be invested in the purchase, manufacture and shipment of tobacco to the appellants exclusively, and should be used for no other purpose whatever. To secure the faithful performance of his engagements, and protect the complainants from loss through said advances, Millner mortgaged (Rec., p. 122) to them, on the 13th day of February, 1871, certain real estate and improvements in Pittsylvania County which he represented at the time to be worth $15,000, this being the limit of said advances for 1871. On May 3d, 1872 (Rec., p. 124), Millner extended the operation of the mortgage to cover the advances of that year. Towards the close of 1872 and beginning of 1873, there was an accounting between the parties, Millner representing that he had faithfully invested and used all the said advances, according to his engagement and not otherwise. The appellants relying upon his said representations and accounting with him on the faith thereof, found that he owed them, as of January 23d, 1873, the sum of $23,260.61, subject to such credits as might arise from sales of consigned tobacco already in their hands. In February, 1873, Millner saw the appellants in regard to the unsettled balance which he owed them, and representing his total inability to pay the same and threatening to avail himself of the benefit of the bankrupt law, offered to make them an absolute conveyance of all the property he owned if they would

accept it in full. He represented the property, which they already held as security, as worth from $6,000 to $8,000 and told them it was all that he had on earth. Appellants, placing full faith in his representations and relying exclusively thereon, after giving him credit for the consigned tobacco then unsold in their hands at such prices as he deemed it to be worth, agreed to accept, in settlement, a fee simple title to the property which they had previously held as security, and to release him forever from the balance of his debt. They did this, as they aver, because they believed Millner's representations and relied on the exhibit he had made to them of his affairs, and because they did not desire to force him into bankruptcy and leave his family penniless.

The bill further charges, that at the time of these transactions Joseph T. Millner and John P. Millner, brothers of the said James R. Millner, were also doing business as manufacturers of tobacco under the firm of Millner Bros. in Pittsylvania County, Virginia, where they resided, and that the said Joseph T. Millner, having frequently been sent to Baltimore by his brother James to confer with the appellants in regard to his business, was fully acquainted with the exact condition of James' affairs. The agreement of compromise between the appellants and James R. Millner, just referred to, was embraced in a written memorandum (Rec., pp. 125 to 127), bearing date the 23d day of February 1873, and it was carried out by the execution of a deed under date of March 15, 1873, from Millner and wife to the complainants, of the property so as aforesaid agreed to be conveyed. (Rec., pp. 12–13.) In both of these papers it is explicitly recited that upon settlement of accounts between the parties, Millner was justly indebted to the appellants in the sum of $15,758.67, which amount both papers expressly stated to be far in excess of the value of the property. (Rec., pp. 13, 125, 126.) In consideration of the conveyance to them of the absolute title to said property, appellants accepted it, as they had agreed to do, in full

satisfaction of their debt, and released all of said debt over and above the value of the property.

The bill further avers that the firm of Millner Brothers, on or about the 5th of March, 1873, proposed to take the property, which was thus to be conveyed, from off the hands of appellants and to pay them therefor 16,000 pounds of manufactured tobacco of stipulated grade and character, they representing that said tobacco was equal to the fair value of the property. Appellants agreed to accept the offer accordingly, believing the whole transaction to be honest and in good faith on the part of the Millners, and relying upon the representations to that effect of Millner Brothers and James R. Millner. The agreement was reduced to writing and will be found in the Record (pp. 11–12). It was carried out on the 10th day of June, 1874, by a conveyance from the appellants to Millner Brothers, for a consideration of $5,000, of all the property which they had received from James R. Millner as aforesaid in compromise of his indebtedness to them. The appellants then further charged that the 16,000 pounds of tobacco which they thus received netted to them only $5,239.16, which was consequently all that they received for the large debt which they had compromised with James R. Millner as aforesaid. On the 3d of September, 1874, Millner Brothers reconveyed to James R. Millner, in consideration of the sum of $6,000, the entire property which he had conveyed, as above stated, to the complainants, in satisfaction of their indebtedness. (See Deed, Rec., p. 16). The amount of Millner's indebtedness, as arrived at in the accounting between them was reached, as has been stated, by allowing Millner for the unsold tobacco, then in the hands of appellants, at such prices as Millner deemed it to be worth. When subsequently sold, however, it brought so much less, as to carry the amount of his actual indebtedness to them, at the time of their release, up to about $18,000.

The bill then charges that the whole of the transactions recited

were part of a plan deliberately concocted, between James R. Millner and his brothers, to defraud the appellants. They aver that for several years prior to their settlement with and release of Millner, instead of applying their advances to him exclusively to the purchase, manufacture and shipment of tobacco as he had expressly contracted to do, such engagement on his part being the condition precedent upon which the advances were made to him, he had systematically and fraudulently set apart and appropriated, from time to time, to his own use, out of said advances and without the knowledge of appellants, the large amount of $12,000; that at the time of said settlement appellants were wholly ignorant of the fraud thus perpetrated on them, and had no suspicion that Millner had this money of theirs or any other moneys in his hands, and that the facts were fraudulently concealed from them by Millner in order to enable him to secure said release from them. They aver that Millner Brothers knew at the time that James R. Millner had in his hands the $12,000 so fraudulently retained, or at all events that he had a large sum of money in his hands, from said advances, which rightfully belonged to the appellants; that Millner Brothers knew of said settlement and release and aided and abetted their brother therein, and procured and took to themselves the subsequent conveyance of the property knowingly and to further the fraud, being aware that the tobacco which the complainants consented to receive from them, as the price of said property, was to be manufactured with the money of the complainants. To that end the bill charges that the three brothers entered into a conspiracy to defraud appellants and took and used their money, which James R. Millner had so fraudulently appropriated to himself, and worked with it as common capital, dividing the profits with him; that they subsequently conveyed the property in pursuance of said fraud to their brother James and shared in the general division of the profits arising from the use of said money.

From March, 1874, the appellants charge that they rested until the 13th day of May, 1885, more than eleven years, in entire confidence that the said several transactions and settlements recited had all been fair and in good faith, and had accordingly treated them as a finality. On the said 13th of May, 1885, however, they charge that they received from R. W. Peatross, Esq., one of the attorneys of James R. Millner, a letter bearing date of 12th of May, 1885, advising them that said Millner, being in feeble health, had sent for said Peatross and had apprised him that he had wronged the appellants in the transactions and settlements in question, and that he desired to confess his wrong and ask the pardon of the appellants, saying, however, that he was unable to do more than make the confession. (See letter, Rec., p. 23.)

This letter the appellants acknowledged on May 13th, 1885, enclosing a letter for Millner, which they begged Mr. Peatross to convey to him, if he felt satisfied that Millner's statement of his inability to make restitution was truthful. In their letter to Millner of the same date thus enclosed, they referred to the communication which they had received from Mr. Peatross and to Millner's assurance that he was powerless to make restitution. The concluding paragraph of their letter places in so conspicuous a light the spirit in which the appellants had intended to deal with the apparently repentant debtor, that they deserve to have it brought, in their own language, to the notice of the Court. It was in these words:

"Believing that no man, at such a solemn time, would utter ought than the truth, we freely extend to you the forgiveness you crave, with the earnest hope that this act may assist you to remove the remorse you express.

"Very sincerely yours,

"HOFFMAN, LEE & CO."

(See letters, p. 24.)

On June 4th the appellants were in the town of Danville, on other business, and having laid these letters before their counsel there, they were advised, for the first time, that Millner was amply able to make pecuniary restitution, being rated as worth from $60,000 to $70,000. Subsequently the appellant, Hoffman, received from Dr. Boyland, the resident physician at Buffalo Lithia Springs in Virginia, where Millner was, under the Doctor's care as his patient, a letter dated June 6th, 1885, written at Milner's desire, and requesting Hoffman to come to the Springs to see Millner, adding that although Mr. Peatross had written the appellants the facts in the case, Mr. Millner would prefer to see Hoffman personally. (See letter, f. Rec., p. 22.)

After further communication from Dr. Boyland, (Rec., p. 22) Mr. Hoffman received a letter dated June 10th, from Millner dictated to Dr. Boyland, requesting Mr. Hoffman to call and see him immediately, with a postscript from Dr. Boyland himself informing him that he thought it would be advisable for him to do this as soon as possible (Rec., p. 23). Accordingly, as the bill avers, Mr. Hoffman, accompanied by his counsel, Mr. Harrison, made a special visit to the Springs to hear what Millner had to say. He arrived there on the night of June 11th. On the next day, June 12th, an interview took place between Hoffman and Millner, in which the latter, as the bill avers, laid bare to Hoffman the whole history of the fraud and wrong which he had done to Hoffman, Lee & Co.; stating that instead of using the advances which had been made to him, exclusively for the purposes to which they were dedicated by the agreement to furnish them, he had set apart portions of the same, for his own use, as so-called earnings or profits, and that at the time when he made the compromise and settlement with Hoffman, Lee & Co., already referred to, and professed to surrender everything he had on earth to save himself from bankruptcy and his family from ruin, he

actually had in his possession $12,000 of their funds, which he had thus fraudulently appropriated, namely, $5,000 in gold and $7,000 in greenbacks. He said that he had not seen a day of rest or peace since he did this wrong; that he was in very bad health, in mind and body, and could not feel satisfied with this load of guilt oppressing him; that he had long desired to make restitution, and had so informed his friends and counsel, but they assured him that he was not able to do so, and he had believed them; that the letter of his counsel, Mr. Peatross, (Rec., p. 23) did not carry out his wishes, and therefore he had sought to have Hoffman come face to face with him and settle the matter satisfactorily, in order that he might make himself right with God and man. Millner accompanied this confession by minute details, showing exactly how he had considered and carried out the fraud and he charged that he had been aided and abetted in it by his brothers, Joseph and John, who were cognizant of said fraud and had purchased and subsequently reconveyed to him, in furtherance of the same, the land which he had conveyed to Hoffman, Lee & Co. to procure their release of his indebtedness. The bill charges that in this interview Millner gave to Hoffman an inventory of his assets, aggregating over $31,000, which will be found on page 21 of the Record. He closed with an offer to make Hoffman, Lee & Co. a conveyance of certain property and pay them certain moneys in full satisfaction. These they would have been glad to receive, and so said to him, but Millner said that he could not act without the counsel of Mr. Peatross, whom he requested Mr. Harrison forthwith to see and acquaint with all that had passed, and ask him to come down and see him, (Millner). This Harrison did, but Peatross refused to go, and declined to advise Millner to make any restitution or settlement of any kind, as he said he did not believe the latter was capable of knowing what he was about. Millner had anticipated this objection and had besought

Harrison to obviate it if possible. (Rec., top of p. 9.) Failing in this he employed Judge Aiken as his counsel. (Rec., pp. 86, 88.) The appellants thereupon, as well as their counsel, advised Millner of the position assumed by Peatross and that it had become necessary for them to seek judicial relief, and they accordingly filed their bill. After the above averments, they concluded by charging that the whole settlement between Millner and themselves was void, and claiming to hold said Millner for the full balance due them, which they aver to be $14,056.26, as of March 4th, 1874, with interest, as shown by their account stated, filed with the bill (Rec., p. 18), and amounting on the first of June, 1885, to $23,541.71 in all. They further claimed that the $12,000, admitted by Millner to have been fraudulently set apart by him from their advances, belonged to them, and that so far as it was invested by Millner and his brothers in the purchase of the land in question, it created a resulting trust in their favor. They charged, specifically, that the deed of conveyance procured to be made by them to Millner Brothers was procured as part of the fraudulent scheme; that the 16,000 pounds of manufactured tobacco, ostensibly given by Millner Brothers as consideration for that deed, was manufactured by them, under agreement with James R. Millner, with part of the $12,000 belonging to the appellants, and that said deed as well as the subsequent conveyance from Millner Brothers to James R. Millner was fraudulent and void. They say that Joseph T. and John P. Millner by being parties to the fraud, conspiring with their brother James to cheat the appellants, and by using the said money of appellants with knowledge, became also responsible to the appellants for any loss sustained by the latter in consequence of the conspiracy and the misapplication of the funds. The bill accordingly prayed that all said deeds of release and conveyance should be annulled and the property in question should be conveyed to the appellants; that John P. Millner and Millner Brothers and

The answer further denies the averment of the bill that J. T. Millner had been sent to Baltimore, by his brother James, to confer with complainants, etc., and was thus fully advised of the standing of James' affairs. Respondent admits that after appellants got this property from James R. Millner and wife, they sold it to Millner Brothers for 16,000 pounds of manufactured tobacco as alleged. This tobacco, he says, was estimated, at that time, by Millner Brothers, as worth from $10,000 to $12,000. Millner Brothers, he says, had no use for the property, and would not consent to buy it (though the appellants were offering it to them at $16,000) until they ascertained that they could pay for it with 16,000 pounds of tobacco. Of all this the respondent says that the appellants were fully advised, as the negotiations progressed. Respondent denies further that James R. Millner represented the real estate which he conveyed to the appellants to be worth $15,000. Respondent "is of opinion" that James R. Millner did not regard the property as worth more than $10,000. He says that Millner Brothers, when they bought the property for $16,000 in tobacco, believed that they were realizing less for the tobacco than they could get for it on the market, but they made the transaction, because it was an accommodation to the appellants, and because they saw their way out of the sale to their brother James. The answer then goes on to deny all fraud, combination or conspiracy on the part of James R. Millner and Millner Brothers. Respondent says he does not believe, and hence denies, that James R. Millner misapplied or set aside to his own use any of the advances made to him by appellants, and "is satisfied" that he faithfully applied all the money advanced, to working the tobacco, which he shipped, in good faith to appellants. If James R. Millner had $12,000 or any other sum of appellants' money, respondent avers that he "did not then nor does he now know it or believe it." He admits, that after the compromise with appellants in 1873, James R. Millner engaged with Millner Brothers

in the mercantile business, and contributed $5,743.33 to it. He and they also worked tobacco in partnership, James R. Millner contributing $7,000 to the business and having one-third interest in it. [It will be noted here that these two amounts, which James R. Millner thus immediately threw into business with his brothers, aggregated a little over the sum of $12,000 which the appellants aver and insist that Millner had reserved to himself fraudulently, with the knowledge of his brothers, out of the moneys which they had advanced him.] The answer then goes on to deny all fraud in these transactions and avers that during all the negotiations, appellants were informed that James R. Millner would be interested with Millner Brothers in their business, and would be a third owner of the tobacco which they paid for the repurchase of the property. He denies that Peatross was ever counsel for James R. Millner, to make any admissions, or wrote the communication to the appellants as such counsel. He did so, the answer states, only as a private friend of James R. Millner, and at his request, which, if true, does not seem greatly to alter the situation. Said James R. Millner, respondent states, was an insane man, and believed to be on the verge of the grave when those communications were written. Among a number of the delusions under which he was then laboring was one that he had wronged the appellants, and it seemed to give him a great deal of annoyance. It was at his request, and in the hope that it might in some way relieve his mind, that Mr. Peatross, out of compassion, etc., wrote the said communications. The answer further states that Millner was not, in all probability, worth more than $8,000 or $10,000 perhaps, above his indebtedness, and that his family was a most helpless and dependent one. Respondent says he knows nothing of the truth of the allegations in the bill as to what occurred after the appellants had received the communication from Mr. Peatross. He repeats his denial that the appellants have any right to relief in the case, and especially denies that they have any such

right as against the respondent himself or the firm of Millner Brothers.

The answer is diffuse, with many repetitions and details, but the above condensation is believed to present a fair statement of its substantial averments.

General replications were duly filed by the appellants (pp. 198–199). A great deal of testimony was taken upon both sides—much of it before the filing of either answer, and all, before the filing of John P. Millner's. There is also a very considerable quantity of documentary proof. The Circuit Court, on the 13th day of May, 1887, dismissed the bill. Its opinion will be found on pp. 200 to 202 of the Record. It was rested, by the learned judge, entirely upon the ground that there were no facts, independent of the statements of Millner himself, which proved fraud, and that those statements were the result of an insane delusion.

The appellants respectfully submit that the learned court below erred in its decree, and asks leave to make the following:

ASSIGNMENT OF ERRORS.

First.

It was error in the Court to find, upon the whole evidence, that the appellants were not entitled to the relief prayed by their bill.

Second.

There was error in finding that there was no sufficient proof of fraud, on the part of Millner or the appellees, or any of them, in procuring the settlement between the parties made on the 28th of February, 1873..

Third.

In finding that there was no misrepresentation on the part of James R. Millner, at the time of and with a view to the said settle-

ment, as to his pecuniary condition, and especially as to the effect that the assignment proposed, and made by him and his wife, was a conveyance of all his property to the appellants.

Fourth.

In holding that there are no facts which showed fraud, independently of the statements of James R. Millner himself, and that Millner's whole impressions and statements in 1885 in regard to the facts and accounts, were the result of an insane delusion.

Fifth.

In finding that when James R. Millner made the confession of his dishonesty at the Lithia Springs, in 1885, he was laboring under a mental disorder, which deprived his statements then made of all force and effect as proof of the frauds which he acknowledged.

Sixth.

In finding that the settlement of 1873 was made mainly upon the terms suggested by the appellant Hoffman; that said terms were proposed by Hoffman, and that the imputation of fraud is "completely refuted" by the alleged offer of Hoffman to reconvey the property assigned to Millner for $10,000.

Seventh.

In refusing to grant against John P. Millner, surviving partner of Millner Brothers, the relief prayed, especially, against him as such survivor, in the bill of appellants.

THE LAW.

There was no dispute on the part of the Circuit Court that the averments of the bill would fully have entitled the appellants to

tration of the fraud alleged in the bill. Did or did not James R. Millner, at and about the time of his settlement with the appellants, and as an inducement thereto, represent to them that he had no means of satisfying his indebtedness to them, beyond the property which he tendered; which they agreed to accept on such representation; and on the conveyance of which they released their claims against him? If he did make such representations, did the appellants believe them to be true, and, relying in good faith altogether upon them and on his integrity in making them, did they accept the composition tendered and release him, when they would not have done so if they had known the truth? Were the representations, on his part, true or false and, if false, did he not know that they were false? Did he or did he not have the assistance of his brothers, in consummating the fraud, and did they not knowingly and wilfully, in his interest and their own, take part in its perpetration? Had he or not, in his hands at the time of the settlement, to the knowledge of his brothers, a large amount of money, whether belonging specifically to the appellants or otherwise acquired, which he might have applied to the payment of his debt to the appellants if he had chosen, but which he reserved for the purpose of carrying on business with his brothers, after he had fraudulently induced the appellants to release him? These and the like, all involving the fact of deliberate, intentional and successful fraud, are the crucial questions in the case. The confessions proven to have been made by Millner in 1885 are important only as proof. They amount to nothing, in themselves, as a foundation for relief. Whether Millner was sane or insane when he made them, is therefore a question which only affects their admissibility and effect as proof. If he is believed to have been insane when he made them, there is only so much the less evidence of fraud. If the fraud is established, independently of his confessions, it makes no difference whether he was of sound or unsound mind when he made them, or, indeed, whether

he made them at all. As evidence, original or confirmatory, or both, they are naturally of grave importance if admissible, but it is only from that point of view that the Court can be troubled with considering them.

In view of the very broad and, as it is respectfully submittted, the very extreme statement of the learned Judge below, that there are "*no facts* which show fraud independent of the statements of Millner, in 1885," it will be necessary and is but proper to enter with some particularity into the presentation of the evidence. This is so voluminous, however, as to compel the counsel of the appellants to content themselves, to a considerable extent, with stating the result of the proof and respectfully inviting the attention of the Court to it, in detail, as it appears in full on the face of the Record.

As a preliminary fact the Court is requested to note the admission of counsel (Rec., p. 186) that $15,531 was the total assessed value of James R. Millner's property, real and personal, at the time the admission was made (1886). John P. Millner, in his testimony given on the 23d of February, 1886 (p. 159), puts the value of his brother's assets at or about $20,000. In his answer (Rec., p. 198) sworn to on the 24th of June, 1886, he singularly reduces it one-half, to $8,000 or $10,000. In the memorandum given by Millner himself, at Lithia Springs, to Mr. Hoffman, on June 12th, 1885, of property standing in his name, he values his assets at $31,000 and estimates his debts at $3,500 (Rec., p. 21). One of the items of that estimate, however, is a balance of $10,000, supposed to be due by Messrs. J. P. Pleasants & Sons. It turned out, however, that this item was largely overestimated, as the balance shown to be due to Millner, principal and interest, on the 30th of May, 1886, appears by the account of the Messrs. Pleasants (Rec., p. 192), to have been only $2,019.13, reducing Millner's statement by $8,000. This account was introduced by the defendant, Overby, himself, with his deposition (Rec., p. 191). That deposition develops

the singular fact, that Mr. Overby, as committee of Millner, had never received and had not in his possession any books, papers, correspondence or documents of any kind, relating to transactions between Millner and the appellants, with the single exception of the contract of February 28th, 1873. This may well account for the entire ignorance of the matters and facts in controversy which Mr. Overby sets up in his answer. (Rec., p. 101). Why all the papers and books of the lunatic should have been kept from the possession of his committee, and by whom they have been retained, are pertinent questions, the answer to which does not appear. Mr. Overby further, in his deposition (Rec., p. 192) identifies the contract of February 28th, 1873, which he says he delivered to his counsel, as the same of which a copy was exhibited on the cross-examination of James P. Harrison, Esq. This will be found on pp. 125 and 126 of the Record, and is identical with the copy filed by appellants. It was literally carried out, as stated in the bill, by the execution of the deed of March 15th, 1873. (Rec., pp. 12–13.) As the indebtedness of Millner to the appellants, at the time of the settlement evidenced by said agreement and deed, may be a fundamentally material question, and the averments of the bill in regard to it, are sought to be impeached by the answer of John P. Millner (Rec., pp. 194–195), as well as by his testimony (Rec., p. 158), it is important to ascertain to what extent the agreement and deed just referred to settle that question.

As to Millner's Indebtedness in 1873.

It will be observed that there is no distinct denial, in the case, of the truth of the averments of appellants as to the amount which was due to them by Millner at the time of the settlement of 1873. The committee of Millner says, in his answer, that he knows nothing about it. John P. Millner, in his answer, does not pretend to deny

it or to assert any knowledge of his own upon the subject. He does not even pretend to say that he believes the averments of the bill, in that regard, to be false. He simply denies that James R. R. Millner ever admitted the indebtedness claimed. Whether he admitted it or not, is, of course, immaterial, if he did really owe it. Undoubtedly the Record shows that he did set up all sorts of claims and pretensions, during the treaty for a settlement, and even went to the extent of insisting that the appellants were his debtors instead of his creditors. But all this absurd talk and bluster referred to by John P. Millner (Rec., p. 194), in his answer, manifestly amounted to nothing but an effort to force the appellants to accept his terms, with a view to the fraud which he contemplated. This is demonstrated by the fact that when driven, at last, to the necessity of definitely adjusting the account, and making some provision for its settlement, he could not avoid confessing, on the face of both the agreement and deed of 1873 (Rec., pp. 13, 125), that "upon a settlement of the accounts of the said advances, secured as aforesaid, the said James R. Millner *is now found to be justly indebted to said Hoffman, Lee & Co. in the sum of $15,758.67.*" There being no averment or pretence that there was any fraud on the part of the appellants, in procuring the settlement of February, 1873, or in the preparation or recitals of the deeds, the conclusiveness of the recital in question as against James R. Millner, and all claiming under him cannot, it is submitted, be the subject of dispute. Moreover—if more could be necessary—it is distinctly proven by Mr. Lee (Rec., p. 47, Ans. 6) that *the very figures, in which the indebtedness is stated, in the deed, are in James R. Millner's own handwriting. And this is proven and admitted likewise by John P. Millner, in his deposition* (Rec., pp. 165, 166, Cross-Int., 260–261). The suggestion by which John P. Millner, in his answer (Rec., p. 195), attempts to account for the statement of indebtedness which was thus made in the deed and agreement, is as puerile as it is gratuitous and

irrelevant. He says: "Respondent does not know how the indebtedness came to be recited in that deed as being $15,758.67, unless it was that the parties, having agreed upon a final and lumping settlement between them, in the manner aforesaid, had then no longer any interest to controvert or dispute as to what the true amount was." In the first place, there is no evidence at all that the settlement was intended to be what Mr. Millner calls "lumping" as to the amount of James R. Millner's debt. As to that there was no surrender on the part of appellants, but, on the contrary, a specific assertion and admission that it was "justly" due. The only compromise consisted in an agreement as to the credit which Millner should have for the tobacco in the hands of appellants, still unsold (Rec., pp. 41, 42, Hoffman, Cross-Int. 4 to 14) and the consent of appellants to accept less than Millner owed them, on the faith that he offered them all that he had. As proof of this, both agreement and deed go on specifically to recite that the sum of $15,758.67, in which Millner was found to be "justly indebted" to the appellants, far exceeded the value of the property which the appellants agreed to accept in compromise. If the transaction had been merely intended to relieve Millner from his indebtedness, without reference to what that might be, there would obviously have been no necessity for the recital of any amount of indebtedness, and much less for the admission that it was larger than the value of the property which was to be conveyed for its extinguishment. The obviously proper recital, in such a case as John P. Millner's answer supposes, would have been that the parties, not being able to agree as to the state of their accounts, had agreed to compromise their differences by conveying, on the one side, and accepting on the other, the property stipulated to be taken. If, as John P. Millner puts it, "there was no longer any interest to controvert or dispute" as to the true amount, there was certainly none, and especially on Millner's part,

to state a false amount and specifically declare it to be true. Except as the recital of an ascertained or admitted fact, the very basis of the settlement, there could have been no possible object in making the statement of actual indebtedness a part of either the agreement or the deed. That the amount arrived at is, in fact, a just and true balance, apart from all admissions, is proven distinctly by both Mr. Hoffman and Mr. Lee (Rec., pp. 20 and 47), and is shown by transcripts from their books, verified by their accountants as well as themselves, as will appear by the Record (Rec. pp. 18 to 20, 42, 50, 51, and 56 to 58).

That Millner's pretended imputations upon the integrity of the appellants, prior to the settlement and pending the negotiations, were utterly base and unfounded, and intended merely to secure a favorable compromise by threats, is demonstrated by the fact, that within a month after the deed of release, he wrote to them, offering to give them his business again (p. 62, Exhibit No. 7): procured his brothers to urge appellants to renew their relations with him (Exhibit No. 4, p. 60), and told them that "the most of the difficulty that had occurred between them had been by the talks of others" (Rec., p. 62). Millner Brothers, themselves, advised John to turn his business again over to appellants (Rec., p. 60, Exhibit No. 4).

The indebtedness of Millner to the appellants being thus shown, it may be important to consider the extent of his indebtedness, if any, to other people. About this, it does not seem that there can possibly be any mistake. We have it distinctly ascertained, under Millner's own hand. In his letter to the appellants, dated December 6th, 1872 (Rec., p. 129), written during the course of the negotiations concerning the settlement in controversy, and with a view thereto, he states, explicitly: "*I have closed up my account with every body except you,* by selling some of my fixtures." . . . I wrote you that I did not intend to sell any of them as I would only like a few

hundred dollars of paying out, but when I got your letter afterwards and saw nothing but a low sale, I thought it best to pay up everything then and have some little money to pay expenses and meet the issue." To the contrary of this, there is nothing in the Record, and, even if there were, the representatives of Millner would be estopped from setting it up as against the explicit statement volunteered by him to the appellants, for them to act on, as one of the elements in their negotiations.

As to the Settlement.

Standing thus, as Millner did, upon his own showing, indebted to the appellants, and to no one else, the next question arises as to the material facts of the settlement. The first inquiry which they present is as to which it was, of the parties, that the proposition came from, to transfer and accept the property mentioned in the agreement in full settlement of Millner's debt. Except as a fact bearing, more or less, upon the general question of fraud, the decision of this question cannot be material, one way or the other. Whether the appellants, misled by Millner's representations, proposed to him to give them the property in question, believing it from those representations, to be all that he could give, or whether he, in connection with the same misrepresentations, proposed to them to accept it in full, cannot be at all important to the issue. It is particularly noticed, however, in this place, because the learned judge below (Rec., p. 201) lays particular stress upon the alleged fact, that "the terms" of settlement finally agreed upon were proposed by Mr. Hoffman before he had an interview with the defendant Millner. This assumption is presumed to be based upon the testimony of John P. Millner (Rec., pp. 157, 185, 186), there being none other, to a like effect, in the Record. The Circuit Court appears to have accepted this

testimony as if there were nothing else in the case to contradict or question it. It is not worth while to consume the time of the Court by going through the long details of this witness's protracted deposition to show the contrary. It is believed to be sufficient, to refer their Honors to the sealed agreement of compromise, so often already cited (Rec., top of p. 126), where the language used is explicit enough to set the question at rest. The words are these: "Whereas the said James R. Millner is unable to pay the said debt in full and *has offered by way of compromise* to said Hoffman, Lee & Co., that he and his wife will by a proper deed surrender and release to the said Hoffman, Lee & Co., or to Robert C. Hoffman, for their benefit, all the right, title and interest whatsoever in law and equity, including the wife's contingent right of dower of them, the said James R. Millner and wife, and to all the property, etc.," describing the property therefore mortgaged and conveyed in fee under the settlement. The same clause concludes by the direct recital in these words: "And whereas, *the said Hoffman, Lee & Co. have accepted the said offer of compromise.*" The subsequent deed from Millner and wife, of March 15th, 1873, carrying out the agreement just quoted, again recites (Rec., p. 13), that the appellants "*at the instance and request of the parties of the first part,* have *consented and agreed* to accept the property, etc., in full satisfaction and discharge of their debt." Nor is this all.

Mr. Harrison, one of the counsel for the appellants, being before the commissioner as a witness, was requested by the counsel for the appellees, on cross-examination (Rec., pp. 111–112), to state what information he had from his clients as to what the agreement of February 28th, 1873, was; that is to say what was agreed by Millner and upon what terms and inducements the appellants released him. He answered (Rec., p. 112, Ans. 17): "Mr. Hoffman came to Danville and put up at the Paxton House, I believe. While here he and Mr. Millner had a conference. Mr. Millner

wanted to settle and so did Mr. Hoffman. *Mr. Millner threatened to go into bankruptcy unless Mr. Hoffman took what he had and gave him a release in full of all his debt.* Mr. Hoffman finally agreed to take a deed to the Axton farm, *that being all Mr. Millner had, as he was assured,* in full settlement of the debt." The witness, J. P. Millner himself, on cross-examination (Rec., pp. 175–176, Ans. 338 to 340), being asked whether Millner Brothers did not "try to get Hoffman, Lee & Co. to settle with James R. Millner, rather than ask Millner to get James R. Millner to settle with them," answered, "I don't think they did. *They might have done it. I can't say.*" This equivocating admission is in the face of his positive testimony in chief (Rec., pp. 156–147), in which he states that Mr. Hoffman, after asking the influence of the witness and of his brother J. T. Millner to get James R. Millner to settle, *proposed* that he would give the latter a release, if he would give up the place and fixtures, upon which Hoffman, Lee & Co. already had a mortgage. And he emphasized it by adding that when he communicated this proposition to James, James replied first, "that he would see them in h—— first," but in a few moments changed his mind and said that he would do it if they would let him remain upon the place for that year.

As to Millner's Representations.

It has thus been shown that Millner was indebted to the appellants in the sum stated in the agreement and deed of settlement, and that he offered the property, which was conveyed and accepted in the settlement, to the appellants, provided they would consent to give him an absolute release, although it was confessed on the face of the settlement itself that the debt was largely in excess of the value of the property to be received. The next question which naturally presents itself, is, upon what representations, if any, did the appellants agree to make the sacrifice. They aver, as has been

shown, that it was because Millner represented to them that the property which he proposed to convey was all that he had in the world. The appellee, J. P. Millner, when called to testify on this point, without pretending to know of his own knowledge whether his brother did or did not in fact make the representation in question, endeavored to create the impression that he could not have done so. For instance, on being asked by his counsel (Rec., p. 157, Question 183), whether Hoffman ever required, or James R. Millner ever agreed, to give up all the property he had in the world in the settlement, his reply is, "I *don't think* sir, he ever did. I *don't think he could* have done it." He then goes on to say in answer to further questions, that he never was asked by Hoffman to require his brother, nor did he ever ask the latter at Hoffman's request, to give up all the property he had. He further adds (Rec., p. 169, Ans. 283) that Hoffman never told him that James R. Millner surrendered everything. This is the sort of proof and the only proof by which it is endeavored to be shown, in contradiction to the testimony of both of the appellants (Hoffman, Rec., p. 30, Ans. 14, 19, 21, and see p. 48, Ans. 8, 9), and of James R. Millner's own letters, that the latter did not profess to surrender all the property that he had for the purpose of inducing the appellants to release him. Notwithstanding this, when cross-examined on behalf of the appellants (Rec., p. 169, Int. 282), as to how much property besides that conveyed to appellants, James R. Millner owned, in February, 1873, the same witness was compelled to answer, "I don't know sir, he claimed that his father owed him; how much I don't know," thus attempting to create the impression that James R. Millner did not represent the property which he conveyed, to be all that he had, at the very moment when he practically states, what he knew to be false, namely, that James R. Millner in fact had no other means, except a supposititious indefinite claim upon his father. Mr. Lee further stated in this connection (Rec., p. 48,

erty upon which they already had a mortgage for $15,000 (Rec., pp. 122–124). The context of Mr. Hoffman's testimony (Rec., p. 29, Ans. to Ques. 8) discloses, as part of his statement (from which the learned Judge below has selected another part and only a part) that in the very interview in which Mr. Hoffman made him the offer, he was assured by Millner that the property in question was "everything he possessed in the world." It further shows (Rec., p. 29, Ans. to Ques. 10) that when Millner mortgaged the property to appellants he estimated it as worth $15,000. Assuming both these statements to be true when made, as Hoffman had a right to assume and as he swears he did assume (and see Dep. of J. T. Millner, Rec. pp. 166, 167, Ans. 262, 265; p. 157, Ans. 183), his offer to let Millner have the property for $10,000, giving him four years to pay it in, and requiring a payment of only $2,000 in cash, was demonstrably based upon Millner's own representations and was intended to be, as it was, a very liberal proposition to him, in the faith that what he had stated was the truth. It would have involved a direct sacrifice by the appellants of more than $5,000, admitted and proven to be due, and would have given to Millner an opportunity of starting afresh, with his property in his possession and under his control, and without the blot upon his credit which, as we have already shown, he apprehended from the recording of the deed of settlement as actually executed. That, with the property released from one third of the encumbrances already upon it, with four years to pay for it and his credit unimpaired, Millner could readily raise the cash payment, $2,000, Hoffman had a right reasonably to believe. Millner's own letters justify this (Exhibit No. 7, p. 62), and it is proven by his brother (Rec., p. 166, Answer 262) that he claimed the property to be worth $16,000 when the compromise was made. That he had actually in his possession at the time over $12,000 in cash, is demonstrated by the appellees' own proof, as will presently be shown, and his refusal to accept the offer is, therefore, only further demonstration, as we have already suggested,

that, with his hands full, he intended to force the property upon Hoffman and give him nothing else. But how Hoffman's having made the offer can be construed or considered as relieving Millner from the imputation of fraud, in representing that the property was all that he possessed in the world, when in fact it was not the one-half of his possessions—or how it rebuts the proof, under his own hand, that he actually made that false representation—the counsel of appellants humbly confess themselves unable to comprehend.

AS TO MILLNER'S MEANS AT THE TIME OF THE SETTLEMENT.

Having thus ascertained what Millner represented to be all the means he possessed, at the time of the settlement which that representation induced, let us endeavor to ascertain what means he then actually had. In other words to what extent were his representations false? The answer to this enquiry is not far to seek. Indeed it is admitted distinctly in the answer of J. P. Millner (p. 197), that after the compromise in 1873, James R. Millner went into partnership with Millner Brothers in the tobacco business, and contributed $7,000 to the capital, and that he then joined them also in the mercantile business, to which he contributed $5,743.33, making $12,743.33 in all. And this, at the very time that he was soliciting the appellants, as has been shown, to take his business again and advance him $3,000, telling them he "had lost all by them" (p. 62), and notifying them that they could have "nothing to go upon" for such advances as they might make, except his "honor as a gentleman." That the said sum of $12,743.33 was in James R. Millner's possession just after the settlement, and was paid to Millner Brothers, as stated in John P. Millner's answer, is further definitely established and detailed by the latter as a witness for appellees, in his deposition (Rec., p. 170, Ans. to Int. 294, 297, pp. 173–174, Int. 320–321), and there is no pretence of denying or disproving it anywhere in the Record. The money was paid by James R. Mill-

ner, cash down (Rec., pp. 174, 175, Answer to Int. 321, 328 to 333). When pressed on cross-examination (Rec., p. 175, Int. 336) as to whether the books of Millner Brothers showed the fact of their having received from James the two large amounts ($7,000 and $5,000), John T. Millner was compelled to reply—"*I can't say that they do. I don't think they do.* They will show for themselves"—but they were never shown. Even when James R. Millner became a partner, through these payments, in both the tobacco and mercantile business, no writings were executed between them, strange to say, in either case (J. P. Millner, p. 175, Ans. 335).

It being established then, that James R. Millner came out of the settlement with over $12,000 cash in hand and a release by the appellants of all claims, and it having been previously demonstrated that he had represented to the appellants, in order to induce the settlement, that he had nothing in the world but the real estate, which he induced them to accept in full, by means of such representation, it is respectfully submitted that the alleged fraud, through misrepresentation, is definitely and fully made out, and the case of the appellants is established as set up in their bill. It is of no importance where Millner got the money, if he had it and knew that he had it, at the time when he declared that he had not. He deliberately procured the compromise and the release by abusing, with falsehood, the good faith and confidence of his creditor.

But the case of the appellants is nevertheless very far from stoping here, although it might well be rested on what has been said already. It is charged in the bill that the $12,000, thus shown and admitted to have been in the possession of James R. Millner at the time of the compromise of 1873, and which he immediately afterwards paid over to his brothers as capital in the two concerns in which he became a partner with them, was the actual money of the appellants, which Millner had fraudulently set aside and concealed for his own use, from time to time, instead of applying it

to the purposes for which the advances were made. This is believed to be literally demonstrated by the proof. The first mortgage of February 13th, 1871 (Rec., p. 122), given by Millner to the appellants, to secure the repayment of their advances of $15,000 to him for the year ensuing, contains an express covenant on his part (Rec., p. 123) to ship to the appellants all the tobacco which he shall work or caused to be worked during that year. The extension of that mortgage, bearing date the 3d day of May, 1872, to secure further advances to the same amount of $15,000, prior to the 1st of June, 1872, is made upon precisely the same terms and conditions as the original mortgage (Rec., p. 124), and it is specifically recited (Rec., p. 123), that the advances were made to Millner "to aid him in his business of manufacturing tobacco." There was, therefore, no source, except the advances of complainants, from which Millner could derive any moneys—no tobacco business (and he had no other business) which he could conduct consistently with these engagements. The state of accounts between him and the appellants, as recognized by the terms of the compromise, shows that he had received more than $15,000, over and above the value of all his shipments, down to that date. What had he done with that money? There is no suggestion in the Record, on the part of the defendants, that he did any other business to which he could have applied it. There was nothing to which he could honestly apply it, except the manufacture of the very tobacco, to the shipment of which the appellants were entitled, and his shipments of which fell over $15,000 short of the advances. He received no advances from any one but the appellants. Whence, therefore, except from the money of the appellants, could the fund have proceeded, which was confessedly in his hands when the appellants released him? If there had been any other supply, his books would have shown it, and his brother, who was thoroughly familiar with his business, and became his partner and received and used the money, could certainly

have shown where it came from. The absolute failure of all attempt to do this, coupled with the facts just stated, is equivalent to a confession, that the money in question was money which he had received from the appellants, and had not applied to the purposes to which he covenanted to apply it. It is not perceived that there can be any escape, under the proof, from this conclusion. John P. Millner is adventurous enough to state, in his answer (Rec., foot of p. 196), that "he is *satisfied* that James R. Millner had considerable money before he began getting advances from appellants, and that he *ought to have had same* at the time of his settlement with complainants." But he does not venture to commit himself as to where the "considerable money" which he mentions came from, nor could the appellants, in examining him, elicit any positive information from him on the subject. When interrogated upon cross-examination (Rec., p. 178, Int. 362 to 366) he was unable to get any closer to an answer, than by saying that he did not "think" that James R. Millner *could have retained that amount* of money from the advances of appellants during the period referred to. Being re-examined in chief (Rec., p. 183), he testified, from hearsay, that James "must have made a good thing" in 1867, and "must have" made $11,000 in 1868—but, for the interval between that and 1873 he does not account, nor for James' own deliberate statement, so often repeated—that "outside of a few hundred dollars," he had nothing but the property mortgaged—and reiterated in the same letter, in the words "I have got no money" (Rec., pp. 129, 130). That John P. Millner was thoroughly well aware of his brother's condition and knew that he had no resources, whatever, except the advances of the appellants, is demonstrated by the letter of Millner Brothers (Rec., p. 59) to which the attention of the Court is particularly invited. In that letter, as late as December 19, 1872, they justify themselves for having telegraphed appellants to let them draw

for $1,000, by saying, that James "was compelled to have" $800, and so "needed" that small sum, that they had to make arrangements to raise it for him.

The retention of this money by James R. Millner is not merely conclusive as proof of the falsehood of his repeated representations that he had nothing, wherewith to pay the debt of the complainants, except the property which he conveyed to them, but is, of itself, a specific fraud in another connection. It is averred, in the bill (Rec., p. 3), to have been the express condition upon which the appellants made their advances to Millner, from the beginning, that he should appropriate every dollar thereof to the purchase and manufacture of tobacco, to be shipped to the appellants alone, and should not, without their permission, divert any part of the same to any other purpose. This is not only the spirit and meaning of the written stipulations in the mortgages, as already shown, but is specifically proven by Mr. Hoffman (Rec., p. 29, Ans. 4 and 9) and by Mr. Lee (Rec., p. 48, Answer 8). The counsel for appellees objected to the evidence of Mr. Hoffman, under the 9th interrogatory (Rec., p. 29), on the ground that "the written agreement speaks for itself." Whether the objection was or was not well taken was not decided below, and it is not therefore open to contest here. It seems proper to suggest nevertheless that the objection was plainly not maintainable. It is not averred, nor does it anywhere appear, that the agreement for advances was in writing, and the mortgages to secure the advances do not profess to recite its provisions but only refer to it, without more. Millner himself declares, besides, in words, that his contracts with the appellants were "both written and verbal," and insists that he had complied with every one of them. (See his letter of March 15, 1873, top of Rec. p. 59). This, he also insisted upon orally, in his negotiations for the compromise (Rec., p. 48, and Ans. 10)

and the appellants declare that they believed him (Id., Id). It is the falsehood of this statement of Millner's, as an independent representation, in part inducing the acceptance of the compromise offered, which the bill sets up (Rec., p. 4), and it is here relied on, as being conclusively established by the proof that the $12,000 had been fraudulently abstracted by Millner, as already shown, in specific violation of his specific engagement as to the appropriation to be made of the advances.

Nor can the deliberately concocted scheme of fraud be fully seen through and appreciated, without reference to the further proof as to what immediately followed the compromise settlement. As early as Dec. 19th, 1872, Millner Brothers had written to appellants, advising them, as a "friend," and "with the purest of motives," to settle their difference with James R. Millner, telling them that "the agitation of the thing had already damaged their house more than they had any idea of," and warning them, "candidly," that if it should terminate in a lawsuit, their business in that locality would be practically destroyed (Rec., pp. 59, 60). On the 5th of March, 1873, soon after the agreement for compromise had been entered into, but before it had been consummated by the execution of the deed of the property (Rec., p. 12), agreed to be accepted, Millner Brothers, agreed to purchase the identical property from appellants for 16,000 pounds of tobacco (Rec., pp. 11–12), and on July 10th, 1874, this agreement was consummated by a deed to them from the appellants, with a recited consideration of $5,000. They, in their turn, conveyed the same property back to James R. Millner himself on September 3rd, 1874, for an alleged consideration of $6,000. John P. Millner testifies (Rec., p. 167, Answers 266–269) that before Millner Brothers agreed so to purchase it, from appellants, James R. Millner had agreed to buy it back from them for $6,000. Fur-

ther on, in his testimony (Rec., p. 168, Ans. 277) he first flatly denies this, and then almost immediately (Rec., p. 169, Ans. 278 to 282, 284), as distinctly reaffirms it. On further cross-examination, he admits (Rec., p. 170, Ans. 293, 296) that James R. Millner had an interest, to the extent of one-third, in the tobacco manufactured by Millner Brothers in 1873; that the 16,000 pounds of tobacco, to be delivered by Millner Brothers to appellants in exchange for the property, as just stated, were manufactured and shipped in that year, and that James R. Millner's "input" into the tobacco firm of Millner Brothers, for the season of 1873–74, "when he worked as a partner in that concern," was $7,000 (Rec., p. 171, Ans. 297). The result of all this conveying and reconveying was, that James R. Millner got back his property for an apparent consideration of $6,000, paid to his brothers, he supplying them, in the very act, with $7,000, to help to manufacture the very tobacco with which they were to buy it from the appellants, and being entitled to one-third of the whole 16,000 pounds himself. The money which he supplied has been already shown to have been the money of appellants, fraudulently appropriated by James R. Millner to his own use. The upshot of the whole transaction thus was, when reduced to its elements, that James R. Millner got rid of his admitted debt of $15,758.67, due the appellants, by applying their own money to the manufacture of the identical tobacco, which was all that the appellants realized for the property, in consideration of which they had granted him a release. In other words, he extinguished his obligation to them by paying them, through his brothers, about one-third of its amount, out of their own moneys, fraudulently retained in his hands. It must be conceded that he was in his right mind and altogether *doli capax*, when he did this, whatever may have happened to him afterwards.

Had the Appellants any Notice of the Fraud Prior to 1885?

It has already been shown that the appellants confided in the integrity of James R. Millner and, relying implicitly upon the truth and good faith of his representations, consented to a settlement and sacrifice which they otherwise would not have made. They aver, in their bill, and both of them testify, explicitly, that they had no cause to suspect that they had been treated dishonestly, in such settlement, until May 1885, when they received the letter from Mr. Peatross (Rec., p. 23), which has already been referred to. (See deposition of Hoffman, p. 23, Ans. 32, Lee, p. 48, Ans. 14). It is suggested, however, by John P. Millner, in his answer (Rec., p. 195), that the appellants were fully advised of the negotiations between James R. Millner and Millner Brothers, by means of which the property in question was purchased from the appellants, by Millner Brothers, and afterwards resold to James R. Millner. The answer further avers (Rec., p. 197) that appellants, when they agreed to take 16,000 pounds of tobacco for the property, were aware that James R. Millner would be a third owner of the tobacco, and that the consideration money ($6,000), which he was to pay, would be for the two-thirds belonging to Millner Brothers. The testimony of John P. Millner however, when examined for the appellees, does not quite come up to these averments. He admits (Rec., p. 169, Ans. 284, p. 168, Ans. 274), that the negotiation for the purchase of the place, from the appellants, was commenced and completed by himself and his brother J. T. Millner for Millner Brothers, and that he did not tell the appellants that James R. Millner had agreed to give $6,000 for the place, until after the settlement of February 28th, 1873, had been made. He deposes, however, that he did inform them ulti-

mately and "after the fact," that the purchase had been actually consummated (Rec., pp. 184, 185, Ans. 425 to 435). Instead however, of proving that the appellants knew that James R. Millner had become a partner of Millner Brothers, and was interested to the extent of one-third in the 16,000 pounds of tobacco, with which Millner Brothers bought the place, he confines himself to deposing (Rec., p. 185, Ans. 437), that the appellants "must have known" that James R. Millner was "working tobacco, with Millner Brothers in 1873." Hoffman, he says, was at the factory "in 1874, and may have been there in 1873," and it was "no secret." When asked (Rec., p. 185, Ans. 432), whether Hoffman had been told what James R. Millner "*had paid*" for the farm, he answered, "Yes sir, we told him what he *had agreed to pay* us for it." Indeed there is no doubt that Hoffman, Lee & Co., became aware, before the transaction was consummated, that James R. Millner had agreed to purchase the property back from Millner Brothers. But that consummation did not take place until September 3rd, 1874. (See deed, Rec., p. 16). Meantime, by his letter of April 15th, 1873 (Rec., pp. 62 to 64), Millner himself had informed the appellants, that his condition was impecunious and embarrassed, and had written to them for their permission to keep his deed, to them, off the record, so that when he gave his bonds to Millner Brothers, or paid them for the land, he could fall back on his original title, and prevent people from finding out, to the injury of his credit, how he had settled with appellants. In that very letter, he told the appellants that "land bonds would answer Millner Brothers until he paid them for the property" (Rec., foot of p. 63). The appellants had consequently no notice whatever, that James R. Millner had at his command the large sum of $6,000—much less $12,000—immediately after his insolvency and settlement with them. On the contrary, his entire letter just referred to, described him as in a needy and

struggling condition, and was as far as possible from indicating that he had retained anything but his credit and energy, with which to begin the world anew. It will be observed too, that he does not make the slightest allusion to his having become a partner in the firm of Millner Brothers. On the contrary, he explicitly says (Rec., top of p. 63), "*I have made arrangements with Millner Brothers to work for me,* all the tobacco that I can get the money to pay for." Further on he adds, with equal distinctness, that although it will cost him more than he could work the tobacco for, himself, *he prefers to do that and "have it done right than to work it himself."* And so Millner Brothers, in their letter of July 24th, 1873, to appellants (Rec., p. 60) proposing to them to take James R. Millner's business once more, refrained carefully from indicating in any way, that James had become a partner in their house, but treated "his business" as entirely his own, and, in that and their previous letter of July 15th, 1873 (Rec., p. 65), drew as plain a distinction as possible, between the business of their brother and that of their firm. In their contract of March 5th, 1873 (Rec., p. 11), with the appellants, to purchase the Millner place for 16,000 pounds of tobacco, Millner & Brothers make no mention, whatever, of any interest of James R. Millner in the tobacco, or of his being engaged in its manufacture, and specifically covenant that the tobacco shall be "*equal* in all respects to the tobacco of the *same brand manufactured by James R. Millner* in 1872."

Although, therefore, the appellants may well have known that James R. Millner was working through his brothers, and manufacturing tobacco on his own account, and had contracted to buy his farm back from Millner Brothers, when he could pay for it; although, too, on their very rare occasional visits to Danville (Rec., p. 43, Ans. 25 to 28), they may have seen him at his brothers' factory, and may have heard, from rumor

(Hoffman, Ans. 27, Rec., p. 43), that he was getting on in his business, in after years, there was nothing whatever to give them the remotest suspicion, that he had retained large funds of theirs in his hands, when they settled with him, and had cheated them into the settlement by false representations and fraud. In settling with him and releasing him, in 1873, their avowed purpose, as well as his, was that he should start the world afresh, unburdened by old obligations, and it was not only no cause of suspicion, but none of surprise, that he should, in twelve years, have made himself comfortable and reasonably prosperous. It is not a very commendable defence, at best, for a man to say: "It is true that I defrauded you, but you did not find me out, soon enough to have the wrong righted." Whatever force however there may be, legally, in such a defence, apart from its honesty, the appellees have established no color of right to it in this case. How completely Millner Brothers put the appellants off their guard, by writing on July 15th, 1873 (Rec., p. 65) that they themselves would receive $12,000, in ten days, which would "put them square with the world," will hereafter be considered.

THE PARTICIPATION OF MILLNER BROS. IN THE FRAUD.

It is only left, now, to consider the share of Millner Brothers in the fraud of their brother John P. Millner. That they had any knowledge of or participation in it is absolutely denied by the surviving partner John P. Millner, in his answer (Rec., p. 196). The proof lies in a comparatively narrow compass.

That Millner Brothers were fully aware of the differences between their brother and the appellants, and were anxious that those differences should be settled, is established by their letter of as early a date as December 19th, 1872 (Rec., p. 59), already referred to, in which they urged an adjustment "as a brother and friend to

both parties," and endeavored to impress the appellants with the belief that they would lose all their business in that section if they attempted to enforce their demands by suit. Mr. Hoffman testifies that Joseph T. Millner, the now deceased partner, was present as "friend and adviser" of his brother James, at the greater part of the interviews in which the settlement was agreed on (Hoffman, Rec., p. 30, Answer 16). He had "shown great solicitude" for its consummation and assisted in its negotiation (Hoffman, Rec., p. 39, Answer near foot of page and p. 43 Cross Int. 19 to 21). Mr. Lee testifies that Millner Brothers evinced a special interest and desire in securing the settlement and "made every effort, through Joseph T. Millner, to complete the compromise" (See Answer 12, Rec., p. 48). Millner Brothers were the mouthpiece of James R. Millner (See their letter of July 24th, 1873, Rec., p. 60), in soliciting appellants to take back his business and in bespeaking their assurance that they would "not attempt to make any more out of him on the old score" and were "perfectly satisfied with the settlement" they had made with him. Indeed the close intimacy of their relations with him and to his business has been already shown from the evidence, and is demonstrated by their letters to the appellants, in regard to his affairs (Rec., pp. 59–60). The testimony of John P. Millner, himself as a witness for appellees, leaves the fact, so far as he is to be believed, no longer open to dispute by him, that Millner Brothers (both partners) not only intervened in the settlement, but conducted the negotiations and completed the compromise (Rec., pp. 156–157, Answers 179 to 181 and 169, Ans. 283). It is true that he contradicts himself over and over, in regard to all the details, on this point (See his testimony Rec., p. 164–165, and p. 178, Ans. 359), but that is his own responsibility.

There is one specific piece of evidence however which so conclusively establishes the criminal connivance of Millner Brothers,

as to supersede the necessity of all other proof. The Court will remember that a short time after the compromise, James R. Millner, who had represented himself to the appellants as penniless, suddenly produced and paid over to Millner Brothers in cash, as partnership capital, the large sum of $12,500. When the attention of the appellants was called, for the first time, in 1885, by James R. Millner's confession hereafter to be considered, to the fact that he had fraudulently appropriated $12,000, of their advances, to his own use, and had agreed "to give it to John and Joseph Millner to work on joint account at their factory" (Rec., p. 35), the appellant, Lee (Rec., p. 49, Ans. 15), in looking over the letter files of the firm was astonished when his memory was recalled to a letter from Millner Brothers of July 15th, 1873 (Rec., pp. 65–66), in which they wrote to the appellants (top of p. 66): "We are glad to inform you that $12,000 *more will make us square with the world. The next ten days will give us that amount which will be all* we will need, till another season." In their total ignorance of the fraud and their entire confidence in Millner Brothers, this letter had naturally created no suspicion in their minds when they received it. With the light thrown back on it by future developments, it tells the whole story. When cross-examined as to the $12,000, which Millner Brothers announced by it to the appellants that "the next ten days" would give them, Mr. John P. Millner broke absolutely down. He was asked (Cross Int. 320, p. 173): "Did you get $12,000 *from any source*, in the Spring of 1873 *other than from Hoffman, Lee & Co?*" he answered, categorically, "*no, sir, I did not. All that I ever got in the tobacco business was* $7,000 *from Jas. R. Millner.*" Being further asked whether James furnished him any funds, in his store business, and if so, how much (Int. 320, Rec., pp. 173, 174), he replied, "yes, sir; he gave me $5,500 and something; I forget exactly what, now." To the enquiry as to when he expected to get

the $12,000 referred to in the letter, he responded, "we expected to get it on shipment of goods" (Int. 323, Rec., p. 174). The next question (329) was, "to whom and what goods?" He answered, "to any one that we could sell goods that we had manufactured in our factory." Question 325: "Did you get the $12,000 in the next few days after July 15, 1873?" Answer: "*I can't say. We may have* gotten more than $12,000. We sold a great deal in the West, Baltimore, Philadelphia &c. It was claimed that we ruined the Baltimore market on low priced goods" (Cross Int. 327). "Did you not, in that letter, refer to some single source from which you expected, at that time, to get $12,000?" Answer: "No Sir, I did not. *The only source was the tobacco in my house.*" When asked (Int. 399, p. 177) whether any commission merchant, other than appellants, furnished him the requisite funds to manufacture with in 1873, he replied, "*I can't say*, my books will show, which can be had by them, or any one else who wishes to see them." In his answer to Int. 350 (p. 177) he admits that he had no contract for advances with any one but the appellants. Question 355: "In 1873 how much tobacco did you market in April, May, June, and July to other parties than Hoffman, Lee & Co.?" Answer: "*Can't say.* My books will show." Question 356 (p. 177): "Did you in these months market enough to other parties to pay you $12,000, and will your books show this?" Answer: "*I don't know. If I did*, the books will show it." This is all the account he can give of the transaction. He is unable to name any amount received from any one but the appellants, and cannot tell whence he received the $12,000 or whether he received it or not. He has not an account of sales to produce or an entry of receipts to show. By the account of sales of the 16,000 pounds of tobacco with which Millner Brothers purchased the property of their brother from Appellants (pp. 20, 21), which was the highest-priced tobacco

named in the accounts, it will be seen that it netted about $4,500, or about 31 cents per pound, after deducting taxes and charges. At this rate it would have required nearly 39,000 pounds to have brought $12,000, if the total value had been advanced, which of course would have been out of the question. Millner Brothers would, therefore, have had to receive advances on largely over 40 thousand pounds, from others than the appellants, in order to get $12,000, and when it is considered that they already had contracted to ship 16,000 pounds to the appellants, to pay for their brother's property, and confessedly sent the greater part of their manufactured tobacco to appellants besides, the pretence feebly suggested that they received and expected the $12,000 from consignments other than those made to appellants, is reduced to an absurdity. They plainly received no money, as John P. Millner said, at first (Ques. 320, p. 173, *ubi supra*), in the Spring of 1873, other than that advanced by appellants, except what they got from James R. Millner. From the appellants they had confessedly no part of the $12,000 in question, and the identity of the amount which they wrote that they would certainly receive, in ten days, with what James R. Millner confessedly paid them, demonstrates their connection with him in the appropriation and use of the moneys of appellants to that amount. It would be simply irrational to treat it as a mere, if indeed a possible, coincidence.

The Confessions and Alleged Insanity of James R. Millner.

The counsel for appellants venture to believe that the case set up in the bill has been proven, to demonstration, by the facts already submitted to the Court. There is, however, an additional phase of the controversy which is both unusual and interesting. The appellants rested, as has been shown, for nearly twelve years,

upon the settlement which had been made in 1873, regarding it as a finality, and without any suspicion that it had been procured from them by fraud. The first notice that they received of the imposition which had been practised upon them, was through a letter, bearing date, May 12th, 1885, from Mr. R. W. Peatross, a member of the Danville Bar, which will be found at the foot of page 23 of the Record. The writer informs them that he wrote it at the request of James R. Millner, who he said was very feeble in mind and body, and was much troubled about a wrong which he said he had done the appellants at the time when he compromised his indebtedness with them. According to Mr. Peatross, Millner stated, that, at the time, he had withheld information from the appellants as to some of his property, and was, therefore, guilty of practising a deception upon them, for which he felt condemned and which he wished to confess and ask pardon for. He added, however, that Millner said he regretted that he was not in a condition to do more than simply confess his wrong. Mr. Peatross said that he had promised Millner to make known his desire to the appellants, and thought it would be a relief to him to know that he had done so, and he further told the appellants that if they could find it in their hearts to write Millner a forgiving letter, they would be likely to confer good upon a man whom he regarded as an object of compassion. The appellants promptly replied, enclosing a letter to Mr. Peatross which they requested him to deliver to Millner, if he felt satisfied that the statement of the latter was truthful, as to his inability to make restitution. The letter for Millner which was enclosed has already been referred to, and we are confident that its terms and spirit will commend the writers to the respect of the Court. Both letters will be found on page 24 of the Record. The appellants received no reply from Mr. Peatross until June 8th, 1885, when, in reply to an enquiry from them, he wrote to them that he had received their letter and

forwarded to Millner the one which they had enclosed for him (Rec., p. 25). Meantime, Mr. Hoffman received a letter from Dr. G. Halstead Boyland, the resident physician at the Buffalo Lithia Springs, Virginia, under date of June 6th (Rec., p. 22), informing him that James R. Millner was a patient of his at the Springs, and was suffering from Bright's disease. He said the cerebral symptoms were such as to render Millner incapable of transacting business, and he desired the doctor to inform Mr. Hoffman of his condition, which was very feeble, and to say that he had received the letter of appellants. Millner added that although Mr. Peatross wrote the facts in the case, he would prefer to see Hoffman personally, and would like very much to have him stop over for a day if he should be passing that way. In the interim, Mr. Hoffman had gone to Danville upon other business for which he was summoned by his counsel (Rec., p. 33, Ans. 41). During that visit he showed his counsel the letter of Mr. Peatross and a copy of the correspondence. He was startled, he says, to learn from them, that Millner was considered a very rich man, worth probably $50,000, and he at once determined, by their advice, to institute suit, should that statement be confirmed. On returning to Baltimore he consulted Bradstreet's Commercial Agency books which rated Millner as worth from $50,000 to $75,000. On the day that he received the postal card of Peatross, dated June 8th, Hoffman received also Dr. Boyland's letter, and immediately on its receipt telegraphed for his counsel, Mr. Harrison, to meet him in Baltimore. The latter arrived next day, and Mr. Hoffman urged him to accompany him to the Springs, as he inferred from Dr. Boyland's letter that he might need the advice of counsel. On the 10th of June Mr. Hoffman received another letter from Dr. Boyland (in reply to a telegram of his) informing him that Mr. Millner was in no immediate danger, and did not want to put him to the trouble of an unneces-

sary visit, but suggesting that it might be better for Millner to have a talk with him and get the business off his mind (Rec., p. 22). At the same time came a letter from Millner himself, also under date of June 10th, written by Dr. Boyland for him (Rec., top of page 23), telling Hoffman that he would like him to call and see him immediately, as he would like to have the worry of the business off his mind. Dr. Boyland added a postscript of his own, in which he stated that he thought it would be advisable for Hoffman to call and see Mr. Millner as soon as possible.

The next day, Mr. Hoffman went with Mr. Harrison to the Springs. Mr. Harrison went only upon the express condition that he should not be present at the projected interview between his client and Millner (Hoffman, Rec., p. 46, Cross Int. 47 to 47 R. D. Quest. 3). On arriving at the Springs, Hoffman consulted Dr. Boyland as to Millner's condition and learned from him, that although he was suffering from Bright's Disease, he was in no immediate danger, and was "in all respects well enough to conduct a business interview." After Mr. Hoffman had made the Doctor aware of the importance of his business with Millner, the Doctor reiterated that Millner was "quite competent to conduct any interview that he (Hoffman) might have with him, clearly and intelligently" (Hoffman, Rec., p. 44, Cross Int. 31, and see Boyland's letter giving his professional opinion to Hoffman, Rec., foot of p. 60, and also his letter to Judge Aiken, Rec., p. 87). Next morning Hoffman met Millner at breakfast. They exchanged greetings cordially and had an interview at Millner's cottage shortly after. No one was present but Millner and Hoffman, it being the distinct request of the former that the interview should be strictly private (Hoffman, Rec., p. 45, Cross Int. 39).

It is impossible to give the details of the interview, without unduly extending the limits of this brief, which the counsel of

appellants have already been forced to make much longer than they desired. The Court is respectfully referred to the testimony of Mr. Hoffman (Rec., pp. 34 to 40 in chief, and pp. 45 and 46 on cross examination). Millner opened the conversation and continued to lead it throughout, always requesting Mr. Hoffman to "hear him out" (Rec., top of p. 35), whenever the latter interrupted him. He gave a thorough and perfectly concatenated statement of his whole affairs, and was "entirely consecutive and clear in everything he said" (Rec., foot of p. 37). He recited, with great precision and fulness of detail, the commission of the fraud charged in the bill and described the participation of his brothers in it and in the advantages derived from it. There is not a single particular, in those regards, averred in the bill or established by the proof, as hereinbefore set forth, which he did not fully and distinctly repeat and emphasize, remembering all the main facts of his transactions with the appellants with "singular accuracy, considering the lapse of time" (Rec., p. 39, Ans. to 2nd Question). He described his physical condition and the progress of his ill health, and said (Rec., p. 34) that when his physicians advised him that he had Bright's Disease and was incurable, it had "made him think a great deal of his future." He said he had read some sermons of Mr. Moody, on "restitution," and knew that he ought to pay back what he had taken from the appellants, without which he could not make his peace with God nor join the church. [It is in evidence, that before he went to Lithia Springs, he had consulted the Rev. Mr. Trayman, as to his spiritual condition, and had received from him a copy of Moody's sermons. On the clergyman's next visit, he asked him to read to him a sermon on "restitution," and consulted him as to the doctrine, in which Mr. Trayman concurred with Moody (Trayman, Rec., p. 113, Ans. 25)]. As an evidence of Millner's intelligence and of the thoroughly business-like view with which he had sought and con-

ducted the interview, it will be noted that he had prepared in advance and handed to Mr. Hoffman a memorandum of the assets at that time in his possession (Rec., foot of p. 21). He said that if he had not lost so much money in the previous year he would have paid the appellants before, and that he had hoped that if Mr. Hoffman came down to see him he would give him time and let him work it out (Rec., p. 36). His brother John, he added (Rec., foot of p. 36), had discouraged him from making confession to the appellants of the wrong that he had done them, and from repairing it. He said that he had been much disappointed at the conduct of John, "in whom he had lost all faith as an honest and a good man," so much so that he had destroyed a will which he had made, under which John was to have control of his property, because he had become convinced that the latter was unworthy (Rec., p. 34). His wife also, he said, although she was willing that he should take some money and settle the matter with the appellants, if he could not make his peace with God, nevertheless threatened to leave him, with their children, if he took too much money for the purpose of such settlement (Rec., foot of p. 34). When informed by Mr. Hoffman that the state of his health (Rec., p. 36) precluded an arrangement, based upon his working out the debts, he then made an offer of settlement, by way of compromise, which resulted in an agreement on the part of Mr. Hoffman, to accept a lot in Danville at a valuation of $5,500, with $2,200 in cash, in full satisfaction (Rec., p. 37). Mr. Hoffman assigns (Rec., p. 40, Ans. to 5th Quest.) as a reason for accepting so small an offer, "the evident contrition and remorse of Millner," and his "assurance that while it rested upon his conscience, he could not improve in health, but feared it would kill him, as the thoughts of it took away his rest and peace of mind." In consequence of what Millner had told him, as to the opposition of his family and the desire of his brother to put

him into a lunatic asylum (Rec., p. 38), Mr. Hoffman made the reservation (Rec., p. 37) that he would make no settlement with him, without the consent of his family and legal advisers, saying, at the same time, that the matter must be consummated promptly, or he would have to enter suit for the protection of his firm.

It is proper, further to know that, in the course of the interview, Millner attempted to assign as a pretext, for appropriating to his own use, the $12,000 which he confessed to have withheld from the money of the appellants, his belief at the time of the settlement that the appellants had not dealt fairly with him as his agents. Mr. Hoffman at once declined to continue the interview, and only consented to do so upon Millner's stating that he was then convinced of the integrity of the appellants, and begging him, with a strong appeal, not to do so (Rec., p. 35). In addition to the previously prepared memorandum of his property, already referred to, Millner made to Mr. Hoffman a detailed statement of his then assets, with their cost and supposed value, of which Mr. Hoffman, then and there, under Millner's dictation, made a penciled memorandum, which will be found at the top of page 65 of the Record (see also Rec., p. 35, last parag.).

In the course of the interview, Hoffman informed Millner that his counsel, Mr. Harrison, had come to the Springs with him. In the afternoon, Millner asked to see Harrison, as he wished him to take a message to Mr. Peatross, his counsel, in Danville, and make known to him his desire to see him at once. Hoffman was present, with Millner, in an interview, which he then had with Harrison, at his (Millner's) request, and in which he repeated to Mr. Harrison in Hoffman's presence, as he had confessed to Hoffman, that he had taken $12,000 from the appellants (Rec., p. 37). After Hoffman had gone to his cabin, to pack up, Millner again called and asked for a final interview, in which he reiterated much that he had stated before, in "urging a quick settlement for the peace

of his mind." He also repeated his conviction, that his brother John was entirely untrustworthy (Rec., p. 37), and entered into some detail (Rec., p. 38), as to his grounds for that opinion.

The appellants are not compelled to rely upon the testimony of Mr. Hoffman, as to Millner's declarations. In the interview which Millner sought with Mr. Harrison, as just stated, he commenced talking of his business with the appellants, and charged Hoffman with being hard with him, and said that he ought to have let him off on easier terms. He commenced by stating that, in 1873, he had kept back $12,000 of appellants' money. Harrison at once protested against talking with him about that, in the absence of his counsel, and asked him not to speak to him on the subject. Millner, in an impatient manner, said that he had sent for Mr. Harrison for that very purpose. He said he wanted Harrison to see Peatross, in whom he had great confidence, and tell him that he had settled with Hoffman, and added that he wanted to tell Harrison all about it, in order that he (Harrison) might inform Peatross, without whose advice and consent he said he had promised to do nothing. He said that his folks had threatened to put him in an asylum as insane, but that he was not insane. He had "never had a moment of peace since he did this, and it had almost killed him, but he had gotten so bad off, now, that he was going to die soon, and that he wanted to make his peace with God and man." He referred to Moody's sermon about restitution, in which it was said that a man could not have his soul saved without making restitution. He had taken this $12,000 from Mr. Hoffman and wanted to pay him all he could, but it was over $20,000 and he could not pay it all (Rec., p. 108). He then mentioned what he had agreed to give Hoffman, but repeated he would do nothing without the consent of Peatross. He pressed Mr. Harrison to see Peatross, and urged him to help him to settle, saying: "that if his people did not let him settle, he

would go crazy sure enough." On reaching Danville, Mr. Harrison went down with his associate counsel to see Mr. Peatross, who said that Millner was insane, and that he would not go to see him or allow him to make any settlement, and that if he made any he would advise his family to upset it. Mr. Harrison states that Millner's conversation was slow and full of repetitions (Rec., p. 109), but he adds (Rec., p. 110), that having heard previously, from his physician, Dr. Harvey, who was also the family physician of Millner, that the mind of the latter was very weak, he remembered it and took special notice of Millner's manner and words. He says (Rec., p. 110, Ans. 6): "I saw no indication of mental delusion. His words were mouthed very much, at times, and he repeated a good deal, but he stated many things that I knew to be facts, and I asked him some questions to test his memory. He himself said that he was charged with being insane, but he denied it." "Of course," added Mr. Harrison, "my opinion is worthless, but I am convinced that he was not, and that he knew what he said fully." These statements of Mr. Harrison, and his whole relation to the interview and his intercourse with Millner, were corroborated and further developed on his cross examination (Rec., pp. 114, 116 to 120).

In order that there may be no doubt that the tenor of the interview with Hoffman was truly stated by that gentleman in his deposition, the Court is further referred to the deposition of Dr. Boyland (Rec., p. 71, Ans. 27), whereby it will be seen that Millner stated its substance afterwards, voluntarily and correctly, to that witness (see also Rec., pp. 73 and 74, from 46 to 50th Ans.). He repeated the same on the evening of the day on which the interview occurred, to Mr. Goode, a leading member of the Bar, then the proprietor of the Lithia Springs, and residing there (Rec., pp. 94 to 95). He went further and desired to enlist Mr. Goode's assistance in having the compromise carried out, which Mr. Goode

declined to give him. There can be no dispute, therefore, as to the fact that he made the confessions averred in the bill; that he was consistent and intelligent in making them; that he appreciated the effect and character of the compromise which he agreed to; that he remembered its details with accuracy, so as to state them afterwards to others, in addition to Mr. Hoffman, and that his statements were fully in keeping with all the evidence in the Record, touching the transactions to which the confessions referred. What weight his confessions are entitled to, as original or corroborated evidence, must depend, of course, upon his mental soundness at the time they were made. And by mental soundness is meant, not merely his general mental equilibrium, but his capacity to apply his mind soundly to the matters which he discussed with Mr. Hoffman, and to speak and act, in regard to those particular matters with intelligence and reason.

The Evidence as to Millner's Sanity.

That Miller, after his conversation with Hoffman and the other witnesses which have been detailed, did gradually grow worse and become a lunatic, so that he was judicially committed to an insane asylum, where he died, a lunatic patient, during the pendency of this proceeding below, there is no question. That he had been previously affected, to some extent, in mind, by disease and bad habits, and had exhibited irregularities and vagaries in conduct and behavior is also indisputable. The Appellants have no desire to minimize anything that is truly stated upon these points, or to escape its effects. But that the impressions under which Millner spoke and acted, in his various conversations at Lithia Springs, were, as the learned judge below has called them, "an insane delusion," is a conclusion which, they humbly submit, is wholly outside the proof.

It will at once be recognized by the Court, that the question here is not simply as to whether Millner was in a condition, at the time of his interviews with parties at Lithia Springs, which would justify the Court in regarding what he then said as sufficiently above question, on the point of sanity, to furnish, nakedly and of itself alone, sufficient proof to maintain this proceeding. That question will not be argued, whatever may be the opinion of counsel in respect to it. It is not in the case. The question is whether an intelligent, deliberate, and reasoned statement—consistent in every regard with all the facts in the case—a statement made for practical purposes, under undoubted religious influences properly applicable to the case and circumstances which it details, is to be treated by a judicial Tribunal as the mere raving of a madman. The theory, on the other side, is that the confession of the crime was purely the outgrowth of a diseased religious excitement. It puts aside, altogether, the question whether the religious excitement was not the result of an actual rankling offence and of remorse at its commission. It ignores the common human experience, that remorse is the natural outcome of crime and rarely maddens men because of purely imaginary transgressions. Men have rarely ever been known to repent of imaginary sin.

Of course the state of Millner's mind, after the interviews referred to, is a matter of no importance, except in so far as it may tend to show his intellectual and moral condition at the time when the interviews were had. That his progress from a short time thereafter was constantly in the downward direction, is the result of the whole of the evidence. It is equally manifest, also, that the overthrow of his intellect was in a large degree the result of the fact, that the arrangement which he entered into with Mr. Hoffman was not consummated, and that the present proceeding was consequently instituted. As early as the 21st day of June, 1885, Dr. Boyland writes Mr. Hoffman: "Mr. Millner desires me to make a final

appeal to you in this matter. *He has worried so much about it since he ascertained that you, i. e., Hoffman, Lee & Co., had determined to sue, that he is growing rapidly worse, and is in a fair way to become actually insane. I would not answer for his sanity thirty days if this state of things continues.* He has a wife and family, as you know, and is much distressed about them. *I believe this business will kill him unless settled at once, and I think you would be doing the act of a Christian man to come here at once and settle with him.*" (Rec., p. 84.) In a letter to Judge Aiken, the counsel of Millner, Dr. Boyland, under date of July 1st, 1885 (Rec., p. 87), expressed the same views, with great earnestness; informing him that the delay in the settlement was preying upon Millner's mind, and endangered his mental condition, as well as retarded his general progress. He added: "There is some cerebral irritability in his case, due to sympathy with his disease—Chronic Bright's Disease. He is sane and perfectly able to adjust this business, knowing exactly what he wants, and taking a very intelligent view of the case. He takes exercise regularly, has a good appetite, and he is certainly *compos mentis*. Nevertheless, he is worrying himself to death, and the only relief for him is the settlement of this affair. Hoffman, Lee & Co. will, I understand, accept the proposition, and the only thing wanted is for Mr. Millner to execute his papers legally to the satisfaction of Hoffman, Lee & Co. It is really a case of humanity, and *if the transaction is not done soon I would not answer for his reason, and am convinced that the worry, coupled with the anxiety to provide for his family, will hasten his death which would in that case probably not long be delayed.*" This letter was written at Millner's solicitation and was endorsed by him, with a request to Judge Aiken to come and see him at once. (Rec., top of p. 88.) Mr. Goode, whose testimony has been already referred to, and who was a witness for defendants, testifies that Millner's condition, both physical and mental, was less

aggravated upon his arrival at the Springs, in May, 1885, than when he had left in August of the previous year, and that he had gone on improving. In the latter part of June, 1885, Mr. Goode states that Millner informed him "that the way of his soul's salvation had been made plain to him, and from that time, for several weeks, the improvement in his mental condition was very marked, so much so that he seemed to me to understand himself perfectly clearly, and to be, I thought, quite rational." (Rec., pp. 90–91.) This state of things continued, as the witness states, until a notice was served upon him, for the taking of depositions in the present case, which was on the 14th day of August. The service of that notice made a great impression upon him, and he seemed to have undergone an entire change in a few hours. He talked wildly and had a return of the restlessness which had characterized him during the first weeks of his visit in 1884, but in the meantime had entirely left him. The witness added, "*I feel safe in saying that from the day of the service of the notice referred to there was a perceptible change each day for the worse in his mental condition* until the 20th day of August, when he came to me and informed me that he was satisfied that Hoffman, Lee & Co. had an agent here for the purpose of assassinating him, and requested me to have some special guard kept over him and his room" (Rec., p. 91). In answer to questions addressed to the witness as to whether, in the conversation in which Millner recited to him the proposed compromise with the appellants, Millner spoke coherently and intelligently, he answered that he did not speak coherently, but witness understood what he meant; that his mind did not wander, and witness understood him to be stating what he recollected of the transactions referred to. When Mr. Goode asked him what led him to offer restitution to the appellants at so late a date, he said "he thought he probably would not live long, and that when he went out of this world, he wanted to be right (using that identical word)—he

wanted to be right—with his God" (Rec., p. 95, Ans. 13 to 16). In reply to the 23d Int., Rec., p. 97, Mr. Goode said: "I am frank to say that I should have been greatly gratified if the counsel of Mr. Millner could have approved of the proposition which he submitted, or in any other way settle the controverted matter between these two parties, for *I believe that the prosecution of this suit seriously imperils his life.*" To Mr. Harrison, the wretched man stated that he wanted him to go to Mr. Peatross for him; "that he had settled with Hoffman;" *that unless that settlement was consummated, it would kill him or put him in the insane asylum, because he could not rest in mind or soul*" (Rec., p. 117, Ans. 48). In fact the whole testimony concurs in showing, that whatever might have been the final result of his ill-health and consequent cerebral disturbance, his disappointment at the failure to consummate his compromise with the appellants was beyond all doubt the immediate, precipitating cause of the overthrow of his reason. For the purposes of this case, therefore, his capacity is to be judged by his condition before he was overwhelmed by that catastrophe.

The unfortunate man, according to all the witnesses who knew him, was, at his best, of very bad qualities, and uncertain and unenviable character, disposition and temper. The picture drawn of him by his brother, John P. Millner, in his deposition is not a pleasant one. Indeed, the portraits which they respectively draw of each other, make anything but an attractive family group. The disease under which James labored, according to the testimony of his family physician, Dr. Harvey, was the result of the grossest excesses, in every variety of brutal indulgence (Rec., p. 146, Ans. 91, p. 142, Ans. 56, p. 143, Ans. 65). In the doctor's opinion the impairment of his mind was not the less due to these causes than the diseases of his body. His brother, John, attempts (Rec., p. 162, Ans. 227) to account for his traits, by stating that when he was quite small, a cart ran over him, and from that time

"we considered him partially cranky, and was told by his physicians never to cross him, as he was liable to be thrown off his balance at any time." Notwithstanding this, the same witness gives in the next breath as a reason for James' incapacity, for several years, to understand the effect and meaning of what he did and said, the too great indulgence of his brother in tobacco and whiskey (Rec., p. 163, Ans. 236). According to his relative, Dr. Trotter (Rec., p. 150, Ans. 122), James R. Millner was unhappy in his disposition, "being selfish, exacting and intolerant of the rights of others." His habits were peculiar (Rec., pp. 150, 151). He was intolerant of advice (p. 122, Ans. 150). According to his brother he "used to be fractious, years ago" (Rec., p. 161, Ans. 217). As a general thing his wife and children were afraid of him (Id., Ans. 151). "He never was a man to make amends: that he was sorry so and so" (J. P. Millner, Ans. 306, p. 172). Altogether he seems preëminently to have been a man to whom, in hopeless and growing disease, every retrospect of life would suggest something to brood over and lament, and whose heart a genuine religious conviction, once lodged, would fill with the most anxious desire to make atonement the pathway to forgiveness. His brother, on the contrary, being in a different condition, felt otherwise. He thought religion and restitution very separable things, and when James spoke of making good to the appellants what he had taken from them, he told him "*not to let it bother him:* that *he* didn't consider that he owed Hoffman and Lee a cent; that if he has to give up all his property that would not cause him to get religion" (Jas. P. Millner, Rec., p. 180, Ans. 375–379). He "had read some," in Moody's book, and "thought he had got it," but he "had never examined it" (p. 182, sec. 395).

This evidence is referred to for the purpose of placing before the Court the manner of man that James R. Millner was, with his surroundings, and the sort of principles and opinions which moved his family to interfere with his doing justice for conscience' sake,

although that interference struck him a death blow, as effectively as if it had been inflicted by physical violence. Against the testimony as to his alleged previous unsoundness of mind, there is the conspicuous fact, that during many of the years when it is now alleged to have existed and to have been known, he was engaged in active and prosperous business, and there are very few, indeed, if any, of the eccentricities—or, more frankly characterized, the brutalities—which are now expanded into evidences of his intellectual unsoundness, and especially by the testimony of his own brother—which are not fully explained by the conceded fact of his habitual and gross intemperance and self-degradation all the time. The opinion expressed by Dr. Boyland as to his capacity, at the time of the interview with Hoffman, was founded on knowledge and observation of his condition as a patient during two successive seasons at the Springs. (Rec., pp. 74–75.) The observations and testimony of Mr. Goode had the same foundation (Rec., pp. 88–89), and they concurred in the statement that the year elapsing, instead of bringing an aggravation of his symptoms, had developed an improvement, both bodily and mental, down to the time of the bitter disappointment of his hopes and wishes.

In addition to the witnesses already mentioned, General Henry S. Taylor of Baltimore, President of the Maryland Hospital for the Insane, happened to visit Lithia Springs for his health towards the end of June 1885, and remained there nine days. He saw Millner the day after his arrival, and talked with him, daily and often two or three times a day, while he was there. He had never heard of Millner before or of any transactions between him and the appellants. Dr. Boyland told him that Hoffman had been there a few days before to see Millner on a matter of business. Millner asked him about persons that he knew in Baltimore, naming Mr. Hoffman, Mr. Stafford and Dr. Miles. (Rec. p. 54, Cross Int. 3 to 5). Upon learning from Taylor that he knew them all well,

Millner, without explaining the character of his business with the Appellants, told the witness that Hoffman had made him two very liberal propositions to settle a debt due his firm, and begged the witness, the day before he left, to see Hoffman on his return, and say to him that if he would come back to the Springs again he would be very glad to settle the whole matter with him, on either of the propositions, "as his bodily health was becoming worse daily on account of his worrying about this debt to them, and he felt sure that if that was once settled he would have some chance of improving bodily." (p. 53, Ans. 8, 9). Upon being asked whether he had any special interest in insanity and whether Millner in his conversations betrayed any symptoms of insanity, the witness replied, that being President of an insane institution with over four hundred patients, which he had visited once or twice a week for years, he did take a special interest in insanity and insane patients. He never saw anything in Millner's conversation to indicate insanity and was surprised when he heard, from Millner himself, that some of his friends regarded him as insane. (p. 54, Ans. 10). He paid special attention to his case, and could discern nothing that he thought justified such a charge. Millner said that the propositions of Hoffman had not been carried into effect, because his counsel, influenced by his friends at home, had refused to come to the Springs to draw the necessary papers. At the instance of Millner, and because in the interest of humanity he wanted to see Millner's mind relieved, the witness saw the appellants, on his return home and they seemed willing to carry the proposition into effect. Being specially interrogated on the point, the witness stated that he could discern "no want of accuracy, or incapability, in Millner, other than incident to his weak physical condition and there was really nothing in that either." (Rec., p. 55, Ans. 1, at foot of p.) As evidence of the entire change in Millner's mental condition, after he had been precipitated into insanity by his inability to make the

settlement he desired, it appears, by the testimony of Dr. Conrad, Superintendent of the insane asylum at Staunton, that while, according to all the witnesses who conversed with him at Lithia Springs, the excellence of Millner's memory was remarkable, he seemed afterwards so entirely to have lost the faculty, that nothing which he stated from memory could be relied on. He had no thought whatever, and habitually lost the chain of connection. His condition had become one of simple imbecility, except when the subject of his pecuniary affairs was introduced. The mere mention of these excited him violently and deprived him of all reason. Still more strange than this entire revolution in his mental condition, Dr. Conrad, instead of agreeing with the physicians other than Dr. McGuire, that his patient was laboring under Bright's disease, emphatically stated that "he had no specific disease, just a general decay of the system," caused by abuse of "whiskey, tobacco and women." (Rec., p. 187, Ans. 5.)

Of the physicians examined by the Appellees, there is no one, except Dr. Conrad, who professes to be an expert in mental disease. Dr. Hunter McGuire distinctly says, "I make no specialty of it, and I am no expert about it" (p. 132, Ans. 8). On being asked what partial insanity is, he frankly replies: "I am not an expert on insanity or anything else" (p. 133, Ans. 17). He says he does not know what partial insanity means, and that "you had just as well ask whether a man is totally or partially dead" (Rec., p. 133, Ans. 16). He says, however, with entire truth and good sense, that "the border land between sanity and insanity is so slight that it cannot well be defined" (p. 132, Ans. 10), and while he did not consider Millner a sane man, he would not say to what extent he was insane, further than to say that sometimes he was capable of making a nice distinction between right and wrong, and very often he was incapable (p. 132, Ans. 11). The witness further denied that Millner had Bright's disease

or any other physical trouble, to account for his mental infirmity. (p. 133, Ans. 23, 24.) The following questions and answers (foot of p. 133) will illustrate fully the general result and value of Dr. McGuire's opinions:—

Question 25.—"What is an insane delusion or delusional insanity?"

Answer.—"*What Millner had.*"

Question 26.—"What did Millner have?"

Answer.—"*Delusional insanity.*"

Question 27.—"Upon what matters or subjects did this delusional insanity exist?"

Answer.—"Religion chiefly—Bright's disease."

Question 28.—"Did it extend to matters of business or money matters?"

Answer.—"I never examined him in reference to that. I don't know."

On the whole, the doctor summed up his ideas of mental disease by saying: "I don't know much about it, and don't believe any one does" (Rec., p. 134, Ans. 31). He candidly admitted his belief that if a person is insane on any subject, it is unsafe to say he is sane upon any (p. 134, Ans. 32), and did not hesitate to declare that if a man should live under the belief that he was "possessed of twenty thousand spirits or devils, *but on all other subjects should be rational,*" that delusion would, in his (the Doctor's) mind, invalidate his contracts and impair his business engagements" (Rec., p. 132, Ans. 19). Obviously, the learned gentleman was not fresh from his Medical Jurisprudence.

Dr. McGuire being the most eminent of the physicians examined for appellees, and having had Millner twice in his hospital, the analysis of his testimony seems to supersede the necessity of fully considering the other less authoritative proof. The testimony of Dr. Trotter, a relative of Millner's, and that of his family physician,

Dr. Harvie, constitute the rest of the medical evidence. Neither of them makes any pretence to being an expert. Dr. Harvie is of opinion that Millner's mind, from the early part of 1884, was "unbalanced upon a great many subjects" (p. 142, Ans. 56). The instances which he gives are entirely apart from business or affairs, and consist chiefly of distortions of feeling and suspicions as to his brother and other members of the family. The doctor admits that during their whole acquaintance Millner was occasionally a wild talker. (p. 145, Ans. 87 to 90.) His habits were restless and his eccentricity was conspicuous. (p. 146, Ans. 95–96.) In the community where he lived, Danville, the witness had not known much expression of opinion as to Millner's sanity, except that he had "heard a few people express the opinion that he was crazy." (p. 147, Ans. 98.) Dr. Trotter's testimony is chiefly dedicated to describing Millner's "peculiarities," which made his acquaintances generally speak of him as "queer" or "singular." (p. 148, Ans. 108 to 118.) In regard to dealing with men, he was very "peculiar." He "prescribed his own terms; always wrote his own contracts, and a compliance with these was demanded, or no trade. He did not trade on the principle of give and take, at all." The doctor comes to the conclusion that, "*for several years past*," Millner had not been of sound mind, and was not, as late *as one or two years*, "capable of understanding the meaning and effect of what he did and said" (Rec., p. 151, Ans. 132, 133). This statement is so extreme, and so entirely at variance with all the other proof, as to deprive it of any force. Indeed, the reasons given for the witness' conclusions amount to little more than the history of the career of a selfish, self-willed, eccentric, capricious man, of bad heart and temper, inflamed and perverted by indulgence, and made violent by the irritation of disease.

The testimony of Mr. J. D. Blair, one of the defendants below, as administrator of Joseph T. Millner, is subject to the same criticism

as that of Dr. Trotter. He admits (Rec., p. 141, Ans. 49) that Millner, notwithstanding his alleged mental trouble, "had a very clear idea of what he owned." "I don't think," added the witness, "that he was deranged upon that subject, in knowing what he owned" (Id., Ib.).

It is respectfully submitted that the whole testimony of the appellees, which has thus been reviewed, fails altogether to reach the real subject of inquiry—that is to say—the intelligence and sane capacity of Millner, at the time of his interview with Hoffman, as to the subject matter of that interview. The consistency of the statements then made by Millner with all the proven facts; the accurate recollection of details, after the lapse of eleven years, which he manifested throughout; his deliberate preparation, in advance, of a schedule of his assets for the purpose of the interview (that subject being one on which, it has just been shown, even by the testimony of Blair, that he was entirely of sound intelligence); the fair and deliberate and wholly rational sense of religious duty under which he professed to act; the intelligence and memory with which he repeated to others, afterwards, what he had said to Hoffman—all these are affirmative facts, against which evidence of delusion as to other things before, and imbecility afterward, can have no countervailing force. They not only are no developments of insanity, but they repel the idea of insanity, and coupled with the testimony and observations of Boyland and Taylor especially, they seem to cover the whole ground of the appellants. Independently of the other proof in the case, their effect might or might not have been so conclusively the same. Coupled with and supported by all the other facts, they appear irresistible.

Only one thing remains to be added. It is suggested by some of the interrogatories on behalf of the appellees, that Millner was at a disadvantage, in his interview with Hoffman and ought to

have had counsel present. This is both unjust and unfair. The evidence is, as already shown, that Millner had endeavored to procure and Hoffman had earnestly desired the presence of Mr. Peatross or Judge Aiken (Exhibit 10, p. 66), but that both of these gentlemen positively refused to be present. It is also proven that by Millner's express request no one but himself and Hoffman was permitted to witness the interview. (p. 35, Ans. 41.) Moreover, it is hard to perceive in what way the appellants could possibly have had any advantage through the absence of Millner's counsel, when the very agreement arrived at was expressly and necessarily conditioned on the approval of his professional advisers and friends. Indeed a man—in Millner's state of health, and with the fear of retribution before him—who could first endeavor to obtain forgiveness from his creditors, without making any restitution at all, and under the false plea, through Mr. Peatross (letter, foot of p. 23), that he had not the means of making any—a man who, when that was found out to be untrue, could bargain and chaffer, through a long interview, to get off with a better bargain, by a few hundred dollars, than the liberal settlement offered him—such a man, it is respectfully submitted, was at least reasonably able to take care of himself.

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JAMES P. HARRISON,
For Appellants.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 99.

HOFFMAN, LEE & CO., APPELLANTS,

vs.

OVERBEY, ADM'R, AND OTHERS.

BRIEF FOR APPELLEES.

S. F. PHILLIPS,
F. D. MCKENNEY,
For the Defendant.

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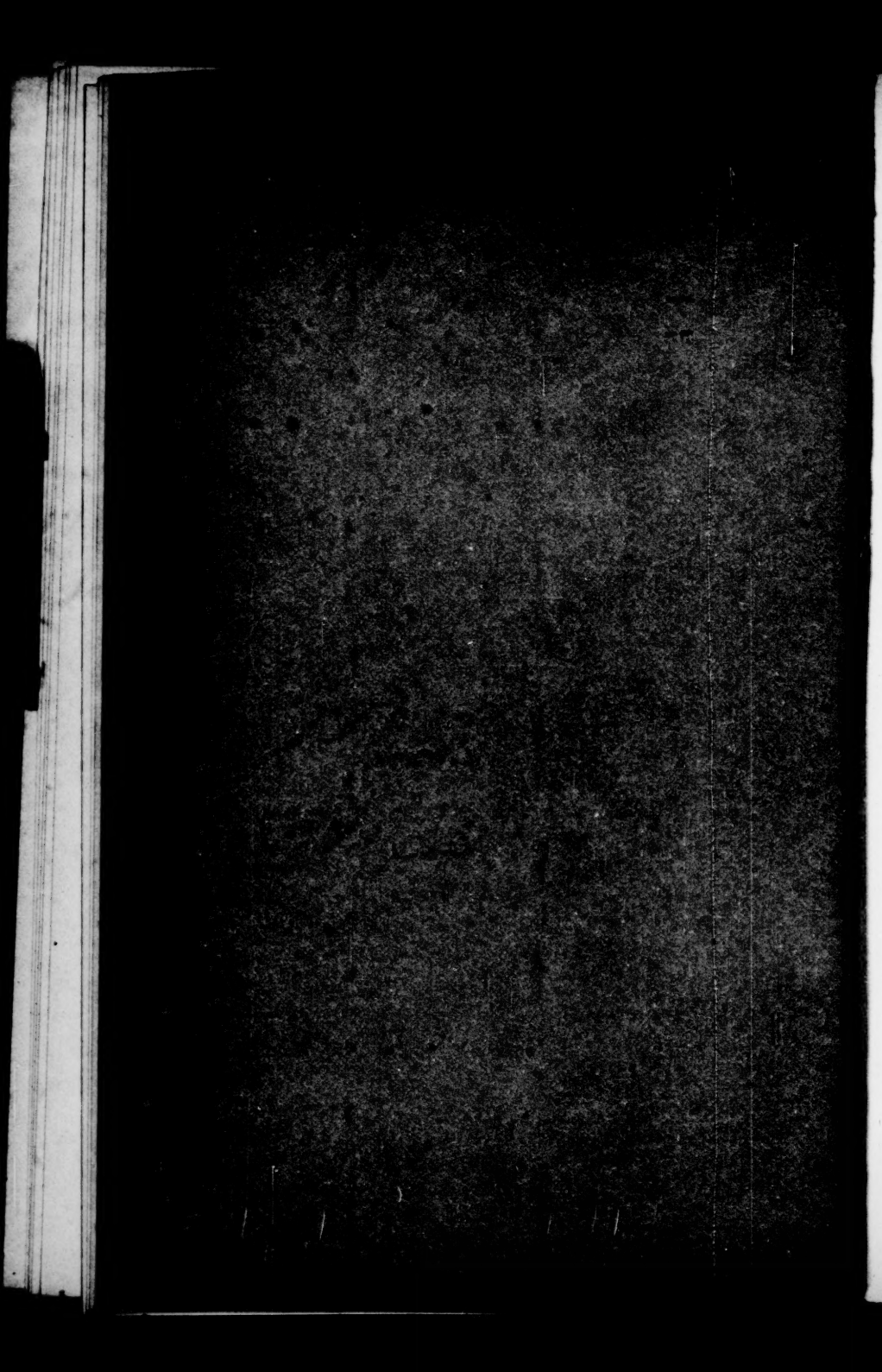

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BRIEF FOR APPELLEES.

This is a bill to rescind a release and to recover the debt released, (amounting to $14,056.26, as of March 4th, 1874,) upon the ground of fraud committed by the intestate, James R. Millner, in inducing the plaintiffs to accept in full discharge of their debt property of far less value, by falsely alleging that such property was all that he had. John P. Millner and Joseph T. Millner, who at that time did business as "Millner Brothers," and who are brothers of the principal defendant, are charged with having aided in such fraud and with having participated in certain profits arising therefrom.

[James R. Millner, being the principal defendant, will be

spoken of in this brief as *Millner;* and his brothers either as "*Millner Brothers*" or by their full names.]

The bill was filed on the 30th of June, 1885; the transaction in which the fraud was committed having taken place in February and March, 1873. Upon the face of their bill the plaintiffs account for the delay in bringing suit by alleging that the fraud was *concealed* from them until May, 1885 (27).

A formal answer was filed by Overbey, as committee of James R. Millner (adjudged a lunatic October 24, 1885: 522), on the 29th of March, 1886 (271); and another answer by J. P. Millner, on the 25th of August, 1886. Joseph T. Millner had died in 1883, and the defendant J. D. Blair is his administrator.

A brief outline of the case is as follows:

In February, 1871, the plaintiffs, who since 1869 had been consignees at Baltimore of tobacco manufactured by Millner near Danville, Va., agreed to make advancements to the latter in his business for the twelve months then ensuing, such advancements not to exceed in all $15,000, to be repaid at the end of such time, and meanwhile to be secured by a mortgage on Millner's residence and the land attached; and in May, 1872, such provisions were renewed for another twelve months. In the fall of 1872 mutual dissatisfaction arose betwixt the parties, Millner complaining of improper dealing with the tobacco consigned to the plaintiffs, and the latter of insufficient consignments for the advances which they had made (348,351). In January, 1873, the plaintiffs transmitted an account to Millner by which it appeared that

h e owed them $23,360.61. In February, 1873, these parties met at Danville, and after estimating that the tobacco still unsold in the hands of the plaintiffs would reduce the debt to $15,768.67, it was agreed that if Millner would release his interest in the mortgaged land and would also procure his wife to do so as to her dower right therein the plaintiffs on their part would release the balance of such debt. This agreement, written and dated February 28, 1873 (342), recites (1) the execution of the two mortgages, (2) the existence of a debt by Millner of $15,758.67, "which sum, it is agreed, far exceeds the value of all the property, real and personal, embraced in said mortgage deeds," and (3) that "*Millner is unable to pay the said debt in full*, and has offered by way of compromise," &c.; and thereupon proceeds to agree for a conveyance of the mortgaged property by Millner and wife and an acceptance thereof by the plaintiffs "in full satisfaction and discharge of the said debt." Endorsed upon such agreement is a certificate by "Robertson and Green," attorneys for the plaintiffs, the former of whom had prepared the agreement and was a subscribing witness thereto, that upon the 3d of May, 1873, Millner complied therewith and delivered to them the deed stipulated for, dated March 15, 1873 (35).

[Within a week after the execution of such agreement the plaintiffs contracted (31) to sell the property embraced therein to Millner Brothers, who had previously agreed to resell it to Millner (461). Upon the 15th of April, 1873, in a letter to the plaintiffs (163), Millner alludes to such contract by him to purchase from Millner Brothers as being a matter already known to his correspondents. In the end the plaintiffs, after suit brought to compel the same (437),

conveyed the property to Millner Brothers on the 10th of June, 1874 (40), and the latter (44) conveyed it to Millner on the 3d of September, 1874.]

Twelve years after this transaction—*i. e.*, in May, 1885—the plaintiffs received from Mr. Peatross, of Danville (59), a note, dated on the 12th of that month, to the effect that Millner, then "very feeble in mind and body," was much troubled about a wrong which he said he had done to them at the time of the above compromise in withholding from them information as to some of his property, and thus deceiving them; that he wished to confess this and ask their pardon, and was sorry that he was not in a condition to do more than that. The plaintiffs answered immediately that they took for granted the truth of his statement as to his inability to make restitution, and thereupon freely extended to him the forgiveness asked. Upon the 4th of June, 1885 Hoffman, being in Danville, was advised by his counsel at that place that Millner was worth $60,000 or $70,000 (18). Upon the 6th of the same month Dr. Boyland, resident physician at Buffalo Lithia Springs, Virginia, wrote to Hoffman, then at Baltimore (54), saying that Millner, who was at those Springs, suffering from "chronic interstitial nephritis," and having "cerebral symptoms such as to render him incapable of transacting any business," desired the writer to inform him of his condition and to ask that if he were passing that way he would stop over.

Upon this Hoffman telegraphed to Mr. Harrison, one of his counsel at Danville, to come to Baltimore (287), and upon his doing so showed him Dr. Boyland's letter, and laid before him for examination the books and correspondence be-

tween Millner, Millner Brothers, and the plaintiffs prior to 1873 (288), and he after going through most of it advised Hoffman to go to Buffalo Springs, "as it might save a suit," and upon being pressed to go along, did so. Upon the 12th of June, 1885, Hoffman had an interview with Millner alone, which lasted for most of the day, and Mr. Harrison during the afternoon had another. Without at present going into the details of such interviews, it may be added here that in consequence of subsequent failure upon the part of the plaintiffs to procure action by the counsel and other friends of Millner (23, 212) in execution of certain proposals which the latter had then consented to for a conveyance of certain property to the plaintiffs in satisfaction for the wrong which he had confessed, the present suit was brought.

The issue between the parties therefore is one *of fact*, inasmuch as the conduct ascribed by the bill to Millner is one which if supported by the proofs would entitle the plaintiffs to relief.

The defendants submit that the proofs do not make out the fraud alleged. This contention may conveniently be presented as follows:

1. In absence, as in this case, of a charge that by fraud or mistake the words of the written agreement of February 28, 1873, did not express the intention of the parties, evidence *aliunde* is not admissible to show that the situation of Millner as regards property, which was made a condition of the written compromise and discharge in that agreement, was something else than that therein actually set forth. In other words, if that writing declared that Millner's inability

to pay the debt *in full* was such condition, evidence *aliunde* is not admissible to show that it was—his *having no other property than that covered by the mortgages.* Oral or other evidence of fraud as to Millner's circumstances, if intended to impeach the discharge by that writing, would have to be limited to fraud as to his ability to pay the debt *in full*, and could not be extended to fraud in relation to some other supposed pecuniary situation upon his part.

Supposing, however, that this can be otherwise, then—

2. Inasmuch as Millner was insane upon September 1st and 2d, 1885, the testimony of the plaintiffs, Hoffman and Lee, given upon those days is incompetent—under a Virginia statute of 1876–'7.

3. Millner's admissions to other witnesses at other times in 1885 were made whilst he was insane.

4. There is no other evidence of fraud *dans locum contractui.*

1. Where the parties to a compromise in writing have upon its face defined the pecuniary condition of the debtor party thereto which is the basis upon which the creditor party thereby accepts a specified compensation in full discharge of the debt,—*there*, in the absence of proof that such paper misrepresents the intention of the creditor, by having been fraudulently or mistakenly worded in respect to such *condition*, it is not competent for the latter to show *aliunde*

that such *basis* was *not* the condition so set forth, but another one entirely different. Fraudulent or mistaken wording of the agreement of February 28, 1873, is not pretended here, and if it were, and under the other circumstances of the case were conceivable, it plainly could not be availed of as a *concealed* fraud (27), so as to avoid the fatal effect of a lapse of twelve years before suit brought. The paper in question is deliberate and was prepared by counsel of the plaintiffs (303), Millner having been without professional assistance thereabouts.

In submitting this proposition it is of course not pretended that oral or other *aliunde* evidence is not ordinarily competent to show that a written instrument is infected with fraud. It may be admitted that if the agreement of February 28th, 1873, had expressed nothing as to the manner in which Millner's condition as to property had influenced the compromise it might have been competent, under a charge of fraud thereabouts, to show orally that it had had such influence, and how; but here the particular condition of Millner's property which the plaintiffs agreed upon in writing as that which moved them to the compromise (*dans locum contractui*), was a condition *much more favorable to him* than that which they now set up as having been their motive; and the existence of the so-expressed condition has never been impeached. No issue has been tendered in the bill as to Millner's ability in February, 1873, "*to pay said debt in full*" (343). What is said therein amounts virtually to an an assertion that the third "whereas" in the agreement for a discharge should be *changed* so as to read: *Whereas the property embraced in said mortgages is all that the said James R. Millner* "HAS ON EARTH" (8, and see 303). It is admitted that

this had been so worded it would be open to the plaintiffs to show that it had been suggested by Millner, and was false and fraudulent. It is also admitted that if the present *wording* had been occasioned by *mistake* of the parties or by some fraudulent *trick* of Millner, plaintiffs might have relief; but as it is, in the absence of allegation and proof of such *mistake* or *trick* in the *factum*, the evidence proposed by the plaintiffs in impeachment of the release in question cannot be received without contradiction of the familiar rule which protects *written* instruments against variation by evidence *aliunde*.

That which the writing of February 28, 1873, establishes as to a willingness of the plaintiffs to release Millner because he could not pay *the whole* of the debt, proves indeed *a fortiori* that they would have done the same thing *if he had had no other property at all* than that mortgaged. But their stipulation of a willingness to release him under the circumstances stated in the writing flatly contradicts the allegation that they had required as a *sine qua non* for such release a condition far more severe; whilst, as has already been submitted, it is absolutely necessary that the plaintiffs should get rid of that contradiction *before* they can be heard to annex incidents (say, of *fraud*) to the hypothesis thus contradicted and inadmissible.

It is proper to observe in this connection that the bill has been framed under the influence of a clear inadvertence by the plaintiffs to the circumstance that the terms of their agreement for a compromise with Millner in February, 1873, did not depend for verification upon the unassisted memory in 1885 of gentlemen who since those terms had been agreed

upon had been immersed in the distractions of a thousand other mercantile transactions incident to business in a large city; and equally did not depend upon such ingenious *reconstruction* thereof as might be brought about by culling from letters and by arraying other collateral incidents that had occurred, often *diverso intuitu*, in the course of a business connection ended twelve years before. Ordinarily, no doubt, these plaintiffs, like other gentlemen, would have responded in a humane way to the *silent appeal* which the vagaries of insanity make to men graciously preserved from such visitation, and would have *come to Millner's aid* by correcting and supplying his deficiencies, and soothing his apprehensions out of the resources of their own good sense. But twelve years had passed since the occasion in question, and they had perhaps always believed that they had lost money thereby. Counsel too had advised them that Millner might be worth $70,000, and the peace of mind of the latter in the great passage then immediately before him seemed to depend upon the "restitution" which had been suggested (291); so that notwithstanding the warning as to the state of his mind which had accompanied their earliest notice of his "admission" and had preceded their interview with him, they concluded that he might, for all practical purposes, be sane enough to recall the terms of the condition upon which he had received the release, and to make reparation. The duties which humanity inspires are not always simple and unembarrassed, and it is not surprising that the plaintiffs concluded it to be their duty to believe that Millner was at least not of unsound *memory*, and that they might well soothe his conscience by the agreeable ministration upon their part to which that memory was leading up; so that not unnaturally they came to recollect

the terms of the preliminary agreement of February, 1873, to be what his "admission" implied that it had been (8). As remembered by them this was in form an *oral* agreement, so that their memory might be indulged thereabouts, and the recollection to which they came was fortunately confirmed by expressions which counsel could by industry pick out here and there in the correspondence of 1873, and before (163, 356). Commonly, indeed, such expressions would be regarded as illustrations of that "*poor mouth*" which persons "*put up*" when angry on account of real or fancied wrongs recently received in the course of business, and who use *rhetoric* in defining the damage done by such wrong; but, assuming that Millner was deemed to be of sufficiently sound mind to *remember* and *admit*, and relying upon the concurrence in such memory to which their own reflections and their wish to help Millner had led them, the plaintiffs were disposed to regard every loud and strong expression to which the latter had given vent in his letters during the fall and spring of 1872–'3 as confirmations of what both parties (both the sane and the insane one) were disposed to agree upon. Their own confidence in what they recollected of events twelve years anterior, and in Millner's sanity as well, was not so great as not to make it pleasant to find confirmation thereof in judicious excerpts from his correspondence.

In the meantime Millner *naturally* (for his state of mind) and the plaintiffs *inadvertently* had forgotten in 1885 that the agreement of February 28th, 1873, had been *in writing*, so that the *condition* of the release in question could be exactly *identified!* It is curious that the parties who in 1885 were still in possession of all their faculties had thus completely

forgotten. For the deed of March 15, 1873, in execution of that agreement, and which is appended as an exhibit to the bill, had not been, and had not been intended to be, executed by the plaintiffs, and their formal *discharge* of Millner is signed and sealed only in the preliminary agreement, which had been formally executed *in duplicate*, having been carefully drawn and witnessed by counsel for plaintiffs (303).

But, falling therein, as it were, somewhat under the spell of Millner's infirmity, rather than allowing his mind diseased to rest upon the advantages of their own, the plaintiffs, as has been said, had forgotten that in accordance with their own usages the agreement had been committed to formal writing. Mr. Harrison, who advised the suit and drew the bill, being called as a witness for his clients says that he had understood from them that there was no written agreement in February, 1873, [and see in this connection the bill (11), which evidently indicates the same thing by the word "parol;" and also Hoffman's elaborate testimony (71, &c.)], and that up to the very date of his cross-examination (May 27, 1886: 285) *he had never seen or heard of it* (304)!

The incident of the fortunate recovery of that paper by the defendants is also an illustration of the difficulties which embarrass the management of the defence in cases like this, turning upon business done many years before. It was only after Millner had gone to the Staunton asylum, and Overbey had become his committee, that it came to light—*i. e.*, perhaps about March, 1886 (270, 272). And it is the only paper relating to the transaction in question which Overbey has received (526). This will account for its not having been used on behalf of the defendants in the examination of the plaintiffs, Hoffman and Lee.

This "incident," however, has been mentioned in this place mainly to explain the contradiction betwixt the *theory of the bill* as to the condition upon which the plaintiffs released Millner, and the *fact* as to such condition shown by that *monument* which was created contemporaneously by the parties in order to preserve its memory. The plaintiffs had utterly forgotten that monument and their counsel had never heard of it, so that its effect upon their contention must be left to any *arrere pensée* of which the exigency may admit.

However, in case it be considered that the circumstance that the agreement of February, 1873, defines in writing the condition of release in the respect in question does not exclude the contention of the bill, viz., that such condition was that the defendants had *no other property than that under mortgage*, and that he had falsely and fraudulently asserted and caused the plaintiffs to believe in the existence of such condition:—*in this case* it will be necessary to scrutinize the testimony introduced in support of that contention.

Upon this general topic it will be assumed that the writing of February, 1873, although, upon the present hypothesis not *exclusive*, is nevertheless *some* evidence.

1. *It is submitted that the testimony of the plaintiffs, Hoffman and Lee, given upon September 1st and 2d, 1885, is incompetent* (See Exceptions: 71 and 125,) under the provisions of a Virginia statute of 1865, re-enacted in 1876–'7, as follows

"*Where one of the original parties to the contract or other transaction which is the subject of the investigation is dead or insane or incompetent to testify by reason of infirmity or other legal cause, the other party shall not be admitted to testify in his own favor or in favor of any other party having an interest adverse to that of the party so incapable of testifying, unless he shall be first called to testify on behalf of such last-mentioned party.*" [The rest of the statute immaterial here.] Session Acts 1876–'7, p. 265, ch. 256.

The point of time therefore at which the insanity of Millner must have existed in order to render the testimony of Hoffman and Lee incompetent, is that of the taking of such testimony, *i. e.*, September 1st and 2nd, 1885.

Whatever difference may exist amongst the witnesses to the record as to the exact state of Millner's mind in June, 1885, the time of his interview with Hoffman, there seems to be none as to his having been insane on and after September 1st.

A sketch of Millner's intellectual capacity from his infancy may be collected from the record.

Dr. Boyland, a witness for the plaintiffs, says (190 and 194), that Millner had "naturally a sluggish and weak mind," "his cerebral capacity being of rather an inferior order." This condition seems to have been made worse by an accident, in which a cart wheel ran over his head at seventeen or eighteen years of age (447). Various eccentricities are attributed to him (402, 407, 442, &c.) by different witnesses, after he had become of mature years and a manufacturer and trader in tobacco; none of these, however preventing him from being *responsible*, and at times to some extent suc-

cessful in business. Subsequently he became excessively addicted to drinking and to other vices (401), which in 1883 or before ended in Bright's disease, and from this, and its result in insanity, he never recovered.

Mr. Goode—a gentleman of the Virginia bar, and proprietor of the Buffalo Lithia Springs, whose intelligence and good judgment are manifest upon the face of his testimony, (taken September 15, 1885),—says (235) that Millner first visited these Springs in August, 1884, and that upon his arrival his mind was evidently very much disordered and his physical condition very feeble; that an unnatural mental excitement continued for the first three weeks of his stay (236), but afterwards his general health improved and there was a subsidence of mental excitement, although during his entire stay, of some six weeks, there was something in his conversation and bearing that indicated unnatural mental condition. An unnatural, wild expression about the eye indicated suffering from some mental aberration. He was almost continuously in motion (235 to 238). On the 22d of May, 1885 (239), upon Millner's return to the Springs, his condition, both physical and mental, was almost identically what it had been upon his arrival in 1884, but after a few weeks he showed a very slow improvement, becoming much stronger physically and mentally, calmer, and more coherent. In the latter part of June he was greatly distressed upon the subject of religion. From this time for several months religion was his constant theme (240). His conversation thereabouts was irrational and extravagant (243). Some time afterwards he said that his salvation had been made plain to him; and for several weeks after this the im-

provement in his mental condition was very marked, and the latter quite rational. This continued until the time (*August* 14) when notice was served upon him to take depositions in the present case (241), and then the restlessness of the first three weeks of his stay returned (242). *A perceptible change for the worse went on each day until the twentieth day of August,* when he became satisfied that the plaintiffs had an agent there to assassinate him, and asked for a special guard for himself and for his room. (And see in this connection *Boyland's* testimony: 204, 206, and 207.) At first his suspicions attached to a few individuals only, but after a few days—to the guests generally, (and see folios 245 to 247). From the first to the middle of June Millner's condition in all respects was about such as upon the 22d of May (243). He frequently intimated that God purposed through him to unravel a great mass of fraud which he claimed Hoffman, Lee & Co. had perpetrated upon a number of people in the county of Pittsylvania (244, and see 247). "He is undoubtedly insane" (248).

The cross-examination of Mr. Goode was mainly directed to matters not concerning the present topic,—which is Millner's state of mind from and after September 1, 1885. This will be noticed hereafter. No contradiction or expression of doubt is suggested by the plaintiffs as to the correctness of Mr. Goode's evidence as to the condition of Millner's mind on and after August 14, 1885. Nor is there any evidence of his having recovered by October thereafter, when he was taken to the Staunton asylum (515), where he remained for the rest of his life:—[dying, August 28th, 1887.]

It is therefore submitted that under the statute above

quoted the exceptions to the testimony of Hoffman and Lee were well founded, and that this should be excluded.

3. *It is further submitted that at the times of his admissions, in May and June, 1885, to Boyland, Harrison, Goode, and Estes, Millner was non compos mentis.*

Dr. Boyland (testimony taken September 14, 1885) had been Millner's physician at the Springs during June, 1885. It was owing to a letter written (June 6) by him to Hoffman (54), whose kinsman he was (182), that the latter went to the Springs to see Millner. In that letter Millner is described as suffering "with that form of Bright's disease known as chronic interstitial nephritis," and having "cerebral symptoms such as to render him incapable of transacting any business." After Hoffman left the Springs Millner told Boyland that some years before he had kept back from the plaintiffs $12,000, and desired to make restitution (188). Upon the 17th of June, at the instance of Hoffman, Boyland gave him a written opinion (175) that Millner at that date was able to converse intelligently and coherently, and knew the difference betwixt right and wrong, and the force of what he says or confesses, and, after repeating the substance of his first letter to Hoffman, he added that Millner's type of *mind* is rather sluggish, but not indicative of insanity. Referring afterwards to the correctness of that opinion (189½), he went on to say that at the time when he was giving testimony Millner was under the influence of delusions, and was of unsound mind. Upon the 21st of June (220) Boyland wrote to Hoffman that Millner then was growing rapidly worse, and in a fair way to become actually insane,

under the news (received June 15th: 225) that the plaintiff intended to bring suit; and told him that "the impression that *Millner* is insane is very strong with the general public, and some of his doctors" (223). Upon cross-examination Boyland said it would have been better for Millner's health if his interview with Hoffman had not taken place, as that was much worse afterwards. He ought to have had a friend present at that time (190).

Mr. Harrison, counsel for the plaintiff, (examined May 27th, 1886: 285), talked with Millner at the Springs on the day (June 12th, 1885) that the latter had the interview with Hoffman; and Millner told him that "in 1873 he had kept back $12,000 of Hoffman, Lee and Co.'s money" (290). Upon the 4th day of June previously Mr. Harrison had told Dr. Harvie (his own, and also Millner's, family physician) of what the plantiffs had heard as to Millner's admission [through Mr. Peatross (59)], and Harvie remarked "that Millner was mentally weak." For that reason when talking with Millner at the Springs he took special notice of his manner and words, *and* saw no indication of mental delusion; he was convinced that he was not insane, and that he fully knew what he said (298: see also 319). When Millner told Mr. Harrison that he had taken the $12,000 from advances made to him by the plaintiffs, the latter was surprised that they had not then detected so large a misappropriation; and thereupon asked him "how it was possible" that he could take so much at one time; and he said that he had "set apart about $2,000 or $3,000 a year out of the advances, that being his idea of the profits he should

have made" but for the unfair sales by the plaintiffs (324, 325).

Taylor, President of the Maryland Hospital for the Insane, and an intimate friend of Hoffman (145), was at the Springs for nine days about the last of June, 1885, and conversed with Millner, whom he then saw for the first time. Having heard that he was supposed to be insane he observed him closely, and could discern nothing to justify such charge (142). Millner spoke of his debt to the plaintiffs, but said nothing special.

Mr. Goode: [quoted before] On the evening or the next evening after the interview betwixt Hoffman and Millner, the latter first spoke to him of the matter betwixt them, and said that in compromising with the plaintiffs, and representing to them the property which was the basis of the compromise, he had withheld from them a knowledge of the fact that he had at that time $12,000 in money (see also 264); also that the plaintiffs had defrauded him out of a large sum, so that a fair settlement between them would show them indebted to him $75,000 (253). Whilst stating this he did not speak coherently, and was confused and obscure; but his mind did not wander, and he seemed to be stating what he really recollected (255). He often talked to Millner about the matter and "apart from his delusions and religious extravagances, * * * he has said nothing to me to indicate that he is not a man of disposing mind and memory, with this exception that he always accompanied the acknowledgment of the wrong done to Hoffman, Lee & Co., with the claim that *they* had largely defrauded *him*, and they would be on any fair settlement largely his debtors" (258–'9).

'There has been no day since my first acquaintance with him when I would have made a contract with him about any matter of importance" (266). Upon the 12th of June, 1885, he was not "capable of entering upon any important interview with any one unless aided and advised by some competent, trusted man" (267).

Estes: Millner told him in May, 1885, that in a settlement with the plaintiffs, some years before, he believed that they had swindled him to a large extent: that everybody in the neighborhood who had any transactions with them had fared as he had; that for several years previous to his failure he had put aside some $2,000 or $3,000 a year outside of his business (281); he believed that the plaintiffs were in debt to him (283).

John P. Millner: James R. Millner had a one-third interest in the firm of Millner Brothers for the tobacco seasons of 1873 and 1874, and had put $7,000 into it (471). He also had put $5,500 into a store business which they were then carrying on. They had repaid him then or shortly afterwards.

Dr. Maguire (examined February 20th, 1886), has a hospital—"St. Luke's Home for the Sick"—at Richmond, Va., where Millner came in January, 1885, to be treated for mental disease (359). He was so irrational that the inmates were afraid of him, and his medicine was administered through a nurse. His delusions were chiefly religious. He stayed for several weeks, and returned in the same condition in September, 1885; in the opinion of the witness Millner was not "sufficiently sane at any time between January and Septem-

ber, 1885, safely to transact any business, especially business requiring memory and reason." Millner did not have Bright's disease; although there was albumen in his urine, due to urethral troubles. He had delusional insanity. Witness believes that if a man is insane upon any subject, it is not safe to say that he is sane upon any (367).

Dr. Harvie (examined February 18th, 1886), Millner's family physician since 1880, says that for two or three years his mind has been unbalanced upon a great many subjects, owing to Bright's disease, abuse of whiskey, &c. (389).

Dr. Trotter (examined February 22, 1886), a half brother of Millner's mother, thinks that Millner has not been of sound mind for several years; the disease has been gradually developing (417).

It is hereupon submitted that Millner was mentally in no condition upon any day during which he conversed with Boyland, Harrison, Goode, or Estes to make binding or reliable admissions in relation to a business transaction of twelve years before. Dr. Boyland gave a written certificate to the plaintiffs as to Millner's state of mind upon the 17th day of June, 1885: but no *admission* was made by the latter at that date. That opinion is confined to appearances upon *the 17th of June;* and it does not contradict the letter to Hoffman of *the 6th of June*, and also it is to be read in connection with what his letter to Hoffman of *the 21st of June* states as to Millner's having grown rapidly worse after *the 15th;* a condition of mind of which probably the illness alluded to in the opinion given on the 17th was an attendant. Some

of Dr. Boyland's expressions were influenced perhaps by his interest as a man in the claim of his *friend* and *kinsman*, Hoffman; and besides this he took a professional interest in removing what he considered to be an obstacle to the recovery of his *patient*, Millner. Taking these things into consideration, the plain trend of his correspondence and testimony is to the effect that Millner was at no time in the month of June or afterwards *compos mentis*. And the same remark may be made of the testimony of Mr. Goode, somewhat reluctant and mortified although he may have naturally been, to observe that in 1885 the Lithia Water of *Buffalo* did not produce the beneficial effect which it had done in 1884: a beneficial effect which in some conversations with Dr. Boyland he had at one time come to believe that it had produced—an opinion which, after further reflection, he, with candor, declined to affirm (258). *Mr. Harrison* would probably allow that in the conversation with Millner upon the 12th of June he did not strip himself of his professional character, or his relation to the plaintiffs; and that however little that circumstance would influence his subsequent statement of *facts*, it might have influenced his contemporaneous *opinions*, *ex. gr.*, that as to Millner's sanity. He admits that questions then put to Millner by him were suggested by a professional the desire to prepare his client's case for any future suit about matter (318, 325). His intelligence and candor are not to be doubted, nevertheless some account is to be given why he failed to observe in Millner that mental infirmity to which a week before his attention had been called by Dr. Harvie, as well as by the letters of Mr. Peatross and Dr. Boyland. Insanity, as is well known, shows itself chiefly in delusions as to *matters of fact*, and does not ordinarily affect the pa-

tient's acuteness in *making deductions* therefrom. No matter how much in error Millner may have been as to the circumstance that an allegation by him that he had no other property than that contained in the mortgage, had been the basis of his compromise with the plaintiffs in 1873, nevertheless his deductions from that delusion as entertained would ordinarily be perfectly sound. Mr. Harrison confesses that being surprised by the statement that Millner could have taken the $12,000 *at one time* without being at once detected by the plaintiffs, he asked him "*How it was possible* (323); whereupon the latter replied that he had taken it in sums of $2,000 or $3,000 a year—his estimate of the profits he should have made but for unfair sales of his tobacco by the plaintiffs. Millner was not thereupon pressed further to explain *how* his previous explanation could be *possible*, inasmuch as those advances had continued only during one year and a part of another—*i. e.*, for twelve months beginning in February, 1871, and again in 1872 from May until December. The credibility of Millner's statement as to the $12,000 rested, in Mr. Harrison's opinion, upon the alleged withdrawal of it in annual instalments, but Millner's explanation in regard to those instalments is less credible than the allegation which it was intended to support. And in this connection it is well to advert to the allegation in the bill that Millner told Hoffman, on the same day that he had spoken to Mr. Harrison,—that he had had in that way $5,000 *in gold* from them, and that that was a part of the sum misappropriated. (See also folio 89.) Now, as *gold* was then commanding a premium of some 12 %, it is very improbable that the plaintiffs made the advances for which they had engaged, in that medium. Considering therefore the

state of Millner's mind, they were called upon to produce evidence in this cause in confirmation of that striking specification of detail. So that their not having done so goes to show delusion upon Millner's part in that respect. And at still another time Millner had boasted, as Mr. Harrison heard (225), that he had put the money which he had made out of the plaintiffs *in Patton's Bank*, at Danville. Inasmuch as Patton was a witness in this case (327), although not called or examined upon this point, this statement appears to have been another of Millner's delusions. And again, the weakness of Millner's mind upon the 12th of June, appears in the exaggerated estimate which he then placed upon the value of his property, it being at the same time plainly his interest, as wishing to effect a compromise, to depreciate that value as much as possible. (Compare 23 and 53 with 513.)

Upon the whole matter, therefore, Millner was so continuously insane in and after May, 1885, that no reliance can be placed upon the admissions then said to have been made by him.

4. *It remains to enquire what support Millner's correspondence and other acts in* 1872 *and* 1873 *lend to this charge of fraud.*

It is obvious that Overbey, the committee and afterwards administrator of Millner, has conducted this defence under circumstances of embarrassment:—the transaction in question having passed for more than twelve years, and the ordinary assistance by instructions from the principal in the transaction, or by contemporary papers preserved by that principal (excepting the agreement of February 28, 1873) being want-

ing. Whatever ingenuity may suggest as regards Millner's competency to guide his affairs in and after January, 1885, about which time he spent six weeks in Richmond, Va., under the care of that eminent physician *Hunter Maguire*, it is plain that he was all that while, as it were, *shooting rapids* which soon after ended in *a plunge* into the Staunton Asylum. His committee found no papers in his possession, excepting that of February, 1873:—no doubt a very important exception. He was probably a man who kept no files of correspondence, and in that respect differed greatly from the plaintiffs. Curiously enough, however, with all the care and business habits which have enabled the latter to produce at once before their counsel (for the purpose of obtaining his opinion as to bringing a suit) all the correspondence in 1873 and before betwixt themselves and Millner, out of which they subsequently skilfully and with some reserve (see Watson *v.* Clarke, 1 C. & Kir., 626) produced only a letter here and there, omitting the *context* and *coherence* of such letters—"curiously enough," we say, *they had forgotten that their agreement with Millner in February, 1873, although the only paper which sets forth the release of Millner now impeached, was* IN WRITING, *signed and sealed on behalf of themselves, and that it stated upon its face the pecuniary situation of Millner as in the course probably of discussion betwixt the parties, the previous suggestions thereabouts by Millner or others had approximately been settled for the purpose of the contract!*.

In 1885 the plaintiffs were of opinion that this agreement had been only *oral* (300), and their counsel, to whom they had disclosed all the evidence in their possession bearing upon the question (288) as to their grounds of suit against

Millner, had never heard of its being in writing until May 27th, 1886, when it was exhibited to him upon his cross-examination (303); having been probably discovered only a short time before by Overbey (270, 271).

In *a conflict of evidence* [which is the hypothesis of the present topic,] as to what constituted the basis of the compromise between Millner and the plaintiffs, it is submitted that the contents of this writing must reasonably have much the greater effect. Twelve years later, after Millner had become insane, and his conscience unnaturally excited about his past life, or only as often happens to persons so affected, about certain passages in that life which some vagary had reproduced and exaggerated, he had forgotten what was the basis of the settlement, and had come to believe that it was something else;—what was left of his judgment flitting about in the meantime and perching for successive moments upon conclusions,—first, that he had no property with which to compensate the supposed wrong; then, that he could pay some thirty per cent. of it, and again that a reopening of the settlement would net *him* $75,000 from the plaintiffs; and finally that thereby a great redress of wrong done to his neighbors by the plaintiffs in like transactions would be brought about.

Upon the whole it appears that the fact that the condition precedent to the compromise of 1873 *had been reduced to writing*, had been forgotten by him by an *insane* lapse of memory not very different from the like lapse thereabouts exhibited by the plaintiffs, although *not insane*.

Upon Millner's ventilating his fancies to the plaintiffs in May and June, 1885, their own memory and sound sense